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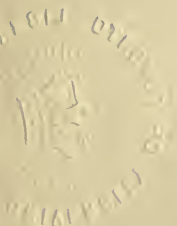


BY

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P R E F A C E.



THIS book is intended mainly, if not entirely, for persons who are not lawyers and do not intend to become such. But it makes no attempt to render every man his own lawyer. It aims solely at giving its readers a little information on the most elementary matters connected with law and business, which it is desirable that all persons possessing property should know. For the benefit of law students, however, references are given on many points on which references are likely to be useful. All lawyers will readily understand these references, but for the benefit of non-lawyers a few words of explanation may be added. The references indicate either Acts of Parliament or decided cases. Acts of Parliament generally have a short title and an index reference. Thus in the first chapter a reference is made to the Coinage Act, 1870, Stat. 33 & 34 Vict. c. 10. The figures here mean the tenth caput (chapter or heading) of the Acts of the Parliament held in the 33rd and 34th years of Queen Victoria. The Parliament of 1870 sat from about February to August, and thus fell partly in the 33rd and partly in the 34th years of her Majesty's reign. Any person taking from a shelf the volume containing the Acts of Parliament of the year 1870, could readily turn to the tenth chapter, and would find it to be an Act bearing as a short title, "The Coinage Act, 1870." Many

Acts of Parliament contain a clause specifying their short title, and to many others short titles were given by an Act passed in 1896, called "The Short Titles Act, 1896." Each Act has also a full title, consisting of the heading prefixed to the Act. The references to decided cases indicate the Reports in which they are to be found. The Reports have full names, consisting in many cases of the names of the reporters who published them ; but there are certain recognized abbreviations by which they are all known. Printed lists of these abbreviations are to be found in all law libraries, and lawyers soon become familiar with them, so that there is no need to embody them in any law book.

In composing this book it has been the writer's endeavour to use ordinary language as far as possible, and to give an explanation of each legal term the first time that it is used. An index including all terms so explained will be found at the end of the book ; so that any one coming across an unexplained term in any part of the book, may turn to the index and be directed to the page on which an explanation will be found.

A. D. TYSEN.

40, CHANCERY LANE,
October, 1898.

TABLE OF CONTENTS.



TABLE OF STATUTES CITED	ix
TABLE OF CASES CITED	xiii

CHAPTER	PAGE
I. MONEY	1
II. BANK-NOTES	8
III. CHEQUES	19
IV. PAYMENTS	37
V. NOTES AND BILLS	43
VI. SAVINGS BANKS	49
VII. SALES OF GOODS	54
VIII. ACCOUNTS	77
IX. THE PUBLIC FUNDS	80
X. SHARES IN COMPANIES	94
XI. COLONIAL AND OTHER BONDS	107
XII. EQUITABLE INTERESTS	111
XIII. COPYHOLD LAND	114
XIV. FREEHOLD LAND	119
XV. LEASEHOLDS	122
XVI. SALES OF LAND	126
XVII. MORTGAGES	135
XVIII. RATES AND TAXES	141
XIX. LANDED ESTATES	146
XX. REAL AND PERSONAL ESTATE	151
XXI. PERSONALTY SETTLEMENTS	155
XXII. WILLS	176
INDEX OF SUBJECTS	185

TABLE OF STATUTES CITED.

	PAGE
1290. 18 Edw. I. c. 1 (Quia Emptores)	119
1351. 25 Edw. III. c. 2 (Treasons)	6
1623. 21 Jac. I. c. 16, s. 3 (Limitations)	17
1660. 12 Car. II. c. 24 (Feudal Tenures Abolished)	120
1677. 29 Car. II. c. 3 (Statute of Frauds)	
s. 17, Sales of goods	64
s. 1, Feoffment	121
1694. 5 W. & M. c. 20 (Bank of England)	9
1707. 6 Ann. c. 22 (Bank-notes)	10
1731. 4 Geo. II. c. 9 (Loan)	84
1743. 16 Geo. II. c. 13 (Loan)	84
1747. 20 Geo. II. c. 3 (Loan)	84
c. 10, Loan	84
1748. 21 Geo. II. c. 2 (Loan)	84
1752. 25 Geo. II. c. 27 (National Debt)	85
1757. 30 Geo. II. c. 19 (Loan)	86
1759. 32 Geo. II. c. 10 (Loan)	86
c. 22, National Debt, Consols	86
1760. 33 Geo. II. c. 7 (Loan)	86
c. 12, National Debt, Consols	86
1761. 1 Geo. III. c. 7 (Loan)	86
1762. 2 Geo. III. c. 9 (National Debt)	86
1764. 4 Geo. III. c. 18 (National Debt)	86
1765. 5 Geo. III. c. 23, s. 12 (Reduced Annuities)	86
1772. 12 Geo. III. c. 63 (Reduced Annuities)	86
1781. 21 Geo. III. c. 14 (Consols)	86
1786. 26 Geo. III. c. 31 (Sinking Fund)	86
1787. 27 Geo. III. c. 13, ss. 48-52 (Consolidated Fund)	87
1799. 39 & 40 Geo. III. c. 28, s. 15 (Bank-notes)	10
1815. 55 Geo. III. c. 184 (Stamps, Cheques)	20
1826. 7 Geo. IV. c. 46 (Bank-notes)	10
1828. 9 Geo. IV. c. 23 (Bank-notes)	10, 11
c. 49, Stamps, cheques	20
1833. 3 & 4 Will. IV. c. 83 (Bank-notes)	10
1836. 6 & 7 Will. IV. c. 71 (Tithe Commutation)	144
s. 12, Definition of owner	144
1837. 1 Vict. c. 26 (Wills)	
s. 9, Attestation	180
s. 15, Gift to witness	181
1841. 4 & 5 Vict. c. 35 (Copyholds)	
s. 86, Manorial Courts	116
s. 87, Surrenders out of Court	117
1842. 5 & 6 Vict. c. 35 (Income Tax)	145

		PAGE
1844.	7 & 8 Vict. c. 32 (Bank Charter)	10
1845.	8 & 9 Vict. c. 106 (Real Property Amendment)	
	s. 2, Freeholds pass by deed	121
	s. 3, Feoffments	121
1853.	16 & 17 Vict. c. 34 (Income Tax)	145
1861.	24 Vict. c. 14 (Post Office Savings Banks)	49
	s. 2, Notice of non-arrival of receipt	52
1861.	24 & 25 Vict. c. 99 (Coinage Offences Act, 1861)	6
	s. 2	6
	s. 4	6
	s. 5	6
	ss. 9-12	6
	s. 16	7
	s. 17	7
1862.	25 & 26 Vict. c. 88, s. 21 (Forged Trade Marks)	68
1863.	26 & 27 Vict. c. 74 (Mint)	5
1866.	29 & 30 Vict. c. 65 (Mint)	5
1870.	33 & 34 Vict. c. 10 (Coinage Act, 1870)	
	s. 3	1
	s. 4	2
	s. 5	1
	s. 7	5
	s. 8	1
	s. 11, § 5	6
	s. 11, § 8	5
	s. 12	2
	s. 14	1
	Schedule I.	5
1877.	40 & 41 Vict. c. 59 (Colonial Stock Act)	108, 109
1881.	44 & 45 Vict. c. 41 (Conveyancing Act)	
	ss. 19, 20, Mortgagee's power of sale	137
	s. 43, Maintenance clause	166
	s. 56, Effect of receipt in deed	129
1882.	45 & 46 Vict. c. 61 (Bills of Exchange Act, 1882)	33
	s. 8, § 4, Payee alone named	25
	ss. 13, 14, Banking days	34
	ss. 36, 73, Reasonable time	30
	s. 48, Notice of dishonour to drawer	31
	s. 49, § 12, Notice of dishonour, time for	31
	s. 50, Notice of dishonour, when unneces- sary	32
	ss. 56, 16, Endorsing cheques	31
	s. 58, Guarantee of title	32
	ss. 58, 73, Position of transferor by delivery	32
	s. 74, Proof on failure of bank	29
	s. 74, § 2, Reasonable time	27
	ss. 76-82, Crossing cheques	25
	s. 79, § 1, Two bankers named	26
	s. 81, Not negotiable	27
1887.	50 & 51 Vict. c. 28 (Merchandise Marks Act, 1887)	67
	s. 17, Warranty	67
	s. 3, Trade description	68
1888.	51 Vict. c. 2 (National Debt Conversion)	81
	s. 2, § 4, Name of New Consols	81
	s. 4, § 1, Stock of Annuities	81
1891.	54 Vict. c. 8 (Tithe Act, exempting Occupier)	144
	s. 9, Definition of owner	144

TABLE OF STATUTES CITED.

xi

	PAGE
1891. 54 & 55 Vict. c. 39 (Stamp Act, 1891)	
s. 7, Cheques	19
ss. 29-31, Bank-notes	11
s. 38, Penalty	21
s. 58, Apportionment of consideration ..	104
ss. 65-68, Sales of copyholds	117
s. 66, Sales out of Court	117
ss. 101-103, Receipts	38, 55
s. 114, Colonial Stock	109
s. 115, Compounding for duty	109
Sched. Conveyance	110
Sched. Marketable security	108
Sched. Release	42
Sched. Settlement	175
1891. 54 & 55 Vict. c. 72 (Coinage Act, 1891)	1, 6
1893. 56 & 57 Vict. c. 71 (Sales of Goods)	
s. 4, Requisites for sale of goods over £10 ..	64
s. 11, Warranty	73
s. 13, Quality of goods	65
s. 14, Purpose of goods	65
s. 15, Inspection by purchaser	66
s. 18, rule 5, and § 20, Loss of undelivered goods ..	56
s. 18, rule 1, Appropriation of undelivered goods ..	57
rule 2, Unmeasured goods	57
s. 22, Market overt	63, 64
s. 49, Action for non-acceptance	62
s. 50, Damages for non-acceptance of goods agreed to be sold	59
s. 51, Damages for non-delivery	60
s. 52, Action for non-delivery	62
1893. 56 & 57 Vict. c. 53 (Trustee Act)	
ss. 1, 3, Investments	159
s. 10, New trustees	171
1894. 57 & 58 Vict. c. 30, s. 39 (Compounding for Duties)	109
1894. 57 & 58 Vict. c. 46 (Copyhold Act)	
s. 82, Manorial Courts	116
s. 83, Surrenders out of Court	117
1896. 59 & 60 Vict. c. 20 (Finance Act)	
s. 31, Limit of land-tax	143
s. 32, Redemption of land-tax	143
1897. 60 & 61 Vict. c. 65 (Land Transfer Act)	
s. 1, Freehold land	133
	177, 180

TABLE OF CASES CITED.

A.		H.	
	PAGE		PAGE
Alexander v. Burchfield	29	Halifax Commercial Banking Co.	
Allen v. Pink	72	and Wood	128
		Hallett's estate, <i>In re</i>	41
		Hargreave v. Spink	64
		Harnor v. Groves	71
		Hensdale v. Larner	17
		Hopkins v. Tanqueray	75
		Horsfall v. Thomas	69
		Hydraulic Engineering Co. v.	
		McHattie & Co.	61
B.		J.	
Bailey v. Bodenham	29	Jeffrey v. Walton	72
Baring v. Commissioners of In-		Jendwine v. Slade	75
land Revenue	108		
Bigge v. Parkinson	65		
Brown v. Edgington	65		
Burnby v. Bollett	66, 67		
C.		K.	
Caballero v. Henty	132	Kleinawart, Sons, & Co. v. Comp-	
Calcott and Elvin's contract, <i>In re</i>	132	toir N. d'E. de Paris	30
Cavander v. Bulteel	131	Knatchbull v. Hallett	41
Chambers v. Miller	13, 14, 24		
Clarke v. Dixon	69		
Cooke v. Wilby	48		
Cory v. Thames Ironworks Co.	61		
Cumber v. Wane	42		
D.		L.	
Davis v. Reilly	56	Lacave & Co. v. Crédit Lyonnais	30
Dixon v. Yates	57	Lewis v. Clay	47
		London and County Bank v.	
		Groome	30
		Low v. Bouverie	112
E.		M.	
Emerton v. Matthews	67	McDonnell v. Murray	16
		Mildred v. Maspons	40
		Miller v. Race	15
		Moule v. Brown	33
F.		N.	
Forster v. Mackreth	21	National Bank v. Silke	26
Foster v. Parker	31	Nickels, <i>In re</i> ; Nickels v. Nic-	
Foster v. Smith	70	kels	170
France v. Gaudet	61, 63		
G.			
Gilmour v. Supple	56		

P.				PAGE
Powell v. Horten	..	..	..	65
Prideaux v. Criddle	..	..	..	31
Pulsford v. Richards	..	..	..	70
R.				
Redmayne v. Burton	..	..	..	16
Rickford v. Ridge	..	..	..	33
Robinson v. Hawksford	..	..	..	28
Robson v. Bennett	..	..	..	29
Rollin v. Steward	..	..	..	33
S.				
Scholfield v. Earl of Londe-				
borough	..	..	..	36
Shepherd v. Kain	..	..	75,	76
Smeed v. Foord	..	..	..	61
Smith v. Hughes	..	..	..	66
Smith v. Mundy	..	..	..	13
T.				
Taylor v. Ashton	..	..	..	70
V.				
Vance v. Lowther	..	..	..	21, 30
W.				
Ward v. Duncombe	..	..	..	112
Watson v. Russell	..	..	..	29
Woodland v. Fear	..	..	..	33
Wright v. Crookes	..	..	..	72
Y.				
Young v. Grote	..	..	..	22, 36

ELEMENTARY LAW.

CHAPTER I.

MONEY.

OUR Government, acting under the authority of Parliament, issues certain coins, and certain laws have been made regulating the exchange of these coins for each other (see the Coinage Acts, 1870 and 1891, Stat. 33 & 34 Vict. c. 10, and 54 & 55 Vict. c. 72).

The names and descriptions of the coins, and also the relative values of one coin to another, are doubtless known to all.

The coins are issued from the Royal Mint, the right of issuing coins being reserved to the Crown (Coinage Act, 1870, s. 5). But any person may take to the Mint any gold of fineness fit for coining, and have it made into coins free of charge (s. 8). No such right exists with respect to silver or copper, and no such right could reasonably be given, as will appear from what is about to be said.

Each coin is bound to contain a specified amount of the precious metals (s. 3), and the Chancellor of the Exchequer is responsible for the due observance of this provision (s. 14).

In order to ascertain that all coins issued from the Mint are of proper quality, a certain number are selected from every issue, and at some convenient time within a year from the date of issue, six or more goldsmiths are summoned to see the coins

tested and report on the result. In this proceeding the goldsmiths are called a "jury," their report is termed a "verdict," and the proceeding itself is known by the name of the "trial of the pyx" (s. 12). In case the verdict of the jury is given against the quality of any coins, the whole of the issue which comprised the faulty coins is called in, and the metal is recoined with an addition of a sufficient quantity of precious metal to bring it up to the proper standard.

With respect to the value of coins, all persons doubtless know that 20 shillings make a pound : but 20 shillings are not as available as a sovereign for all purposes. It is true that if a man owes a pound he may pay it with a sovereign or with 20 shillings ; and, indeed, if he owes £2 he may pay it with 2 sovereigns or 40 shillings, or make up the amount with gold and silver coins in any manner that he pleases. But the law is different for larger sums. A man is not at liberty to pay more than £2 in silver. He must pay larger sums in gold up to within £2 at least of their full amount. If a man owed £2 1s. it would not be sufficient for him to tender 41 shillings in payment. The creditor might, of course, accept it if he chose ; but he might also refuse to take the money in that form, and require the debtor to include at least one gold coin in making up the sum. If the debtor only tendered the silver coins and the creditor refused them, the latter might still recover his debt, just as if the debtor had not offered to pay him at all.

The law on this point is expressed by saying that silver coins are a legal tender for a payment of an amount not exceeding 40 shillings, but for no greater amount (s. 4).

In like manner a tender in bronze coins is a legal tender for a payment of an amount not exceeding one shilling, but for no greater amount (s. 4).

A tender in gold coins is a legal tender for a payment of any amount.

In connection with this subject we may mention that the refusal of an offer to pay a debt does not satisfy the debt.

The debtor still remains liable to pay the sum when called upon. The refusal of the offer only precludes the creditor's rights to interest after the date of the tender, and to the costs of recovering the debt; and even these will revive, if the debtor subsequently declines to pay the debt on receiving a demand from the creditor.

This point may deserve some further illustration. The reader may, perhaps, think that if a creditor on being offered his money is fool enough to refuse to take it, he will deserve to lose it altogether. One may be sure, however, that no creditor ever capriciously refuses his money when all that he considers to be due is offered to him. The cases in which a tender is refused, are always those in which there is a dispute about the amount due, and the creditor claims more than the debtor tenders. In the creditor's view, therefore, the tender is insufficient, and he is justified in refusing it, and bringing an action for the whole sum which he claims. If it turns out that the debtor was right as to the amount, it is certainly just that the creditor should pay the costs of the action, and have no right to interest subsequent to the tender; but there can be no ground for taking away from him that which is admittedly due.

We may also mention that it is a recognized rule of law that a creditor is entitled to be paid his whole debt at once, and cannot be compelled to accept any petty instalment whenever the debtor may have a small sum to spare; and in like manner a debtor cannot be compelled to pay a debt piecemeal, he may insist on paying all if he is called upon to pay any.

We may here point out that the result of making gold coins a tender for any amount, and silver coins only up to 40 shillings, is that the value of the gold coins is determined absolutely by that of the gold which they contain, while the value of the silver coins is made dependent on that of the gold ones. The value of the bronze coins is therefore also dependent on the value of the gold ones.

A little further consideration will show why the right of having gold made into coins free of charge should not be extended to silver. The value of the silver coins depends on that of the gold ones, for which they are interchangeable, and not on the value of the silver which they contain. Hence it is necessary to fix the amount of silver in them at something below the amount which could be bought at the price which they represent. For if 20 shillings contained more silver than could be bought in the market for a sovereign, no silversmith would buy silver in the market at all, but he would melt down all the silver coins he could get for the purposes of his trade. There is therefore a profit on the coinage of silver coins, the coined silver being worth more than the uncoined, and if every person possessing silver had the right of having it coined, he would at once claim the right and realize the profit.

Foreign coins are not a legal tender in the United Kingdom. There have sometimes been a considerable number of French decimes, or 10-centime pieces, passing in this country as pence and commonly called French pennies, but legally anybody might refuse to take them. People in general do not mind taking them because the difference in value between a decime and a penny is small, and the number of such pieces is small compared with the number of pence in circulation. By French law 10 decimes are equivalent to a franc, and 20 francs to a napoleon. Thus it requires 200 decimes to make a napoleon; and the amount of gold in a napoleon is to that in a sovereign as about 200 to 252; and 252 decimes would therefore be required to make a pound. Now a pound contains 240 pence, so that 240 pence are equivalent to 252 decimes, or 20 pence are equal to 21 decimes. Thus a person taking a decime for a penny suffers a loss of the twenty-first part of a penny, and if he receives 21 such pieces, he only receives the value of 20 pence. Still, slight as this loss is, many people are unwilling to incur it, and exercise their legal right of refusing to take French pennies; and there can be little doubt that if the number of such coins in

circulation here increased to any great extent, it would become the general custom to refuse to take them.

Besides the Royal Mint in London, branch mints have been established in some of the colonies, and the Crown has been empowered to declare that gold coins issued from any colonial mint, being of the same weight and fineness as the corresponding coins issued from the Royal Mint in London, shall be a legal tender in this country (see 26 & 27 Vict. c. 74; 29 & 30 Vict. c. 65; and the Coinage Act, 1870, 33 & 34 Vict. c. 10, s. 11, § 8). Under this authority the gold coins issued from the branch mints at Sydney and Melbourne in Australia, have been made a legal tender in the United Kingdom. The mode in which the Crown exercises this power of making colonial coins a legal tender, is by a proclamation published in the *London Gazette* (see the *London Gazette* of February 6, 1866, August 10, 1869, and January 17, 1871).

The coins first issued from the Sydney Mint were lighter in colour than English gold coins, and soon became known as Australian sovereigns and half-sovereigns: they contained the right amount of gold, but the difference in colour was caused by a difference in the alloy used. Now, however, the coins issued from the Sydney Mint are indistinguishable in colour from English coins, so that apparently the same alloy is used in both places.

Coins, like other commodities, are worn away by use. It does not appear to have been found necessary to specify any limit below which silver coins should cease to be a legal tender, but for gold coins a limit is fixed; they cease to be a legal tender when they have lost about $\frac{1}{160}$ th part of their weight (Coinage Act, 1870, 1st sched.). That is to say, a sovereign may be refused when it is so worn that its value is reduced by three half-pence, and a half-sovereign when its value is reduced by three farthings.

Not only may a gold coin be refused when it is so reduced, but the Coinage Act, 1870, s. 7, expressly directs every person,

to whom any such coin is tendered, to deface it. Private people, however, never think of acting upon this law, but take all gold coins without weighing them, and London bankers are always willing to give their customers credit for all gold coins at their nominal value. The officials at Somerset House, however, used to refuse light coins and deface them; but now the Coinage Act, 1891, has empowered the Crown to give new coins in exchange for old ones which have simply been lightened by fair wear and tear (54 & 55 Vict. c. 72). An Order in Council under this Act was issued on March 16, 1892, and some special facilities for exchanging light coins for new ones have been provided under it (see a Bank of England notice, dated March 29, 1897). At present therefore light gold coins, which have lost their weight merely by fair wear and tear are accepted at Somerset House at their full nominal value, and it is probable but not certain that this practice will continue.

The Crown is authorized from time to time to call in old coin (Coinage Act, 1870, s. 11, § 5), subject of course to the duty of giving new coins in exchange for the old ones. Under this authority all pre-Victorian gold coins have been called in, and such are no longer a legal tender.

Before leaving the subject of money, we may mention that the making of false coin and endeavouring to pass it, have always been regarded as most serious offences by our law. In ancient times the former offence, which was described as "counterfeiting the king's money," was included in the list of acts of treason, and punished with death (Stat. 25 Edw. III. c. 2). Now, however, it is only a felony, but may still involve so severe a punishment as penal servitude for life (Coinage Offences Act, 1861, 24 & 25 Vict. c. 99, s. 2). Trying to pass false coin is punishable with imprisonment for a year for the first offence, and for a second offence the punishment may amount to penal servitude for life (Ibid. ss. 9-12).

It is also felony to clip any coin with the intent that the lightened coin shall pass as current coin (Ibid. s. 4), and it is felony knowingly to be in possession of any chippings (s. 5).

Fourteen years penal servitude may be inflicted for the former offence, and seven for the latter.

It is also an offence to deface any coin by stamping any word on it, and this offence is punishable with imprisonment for any term not exceeding one year (Coinage Offences Act, 1861, s. 16). The defaced coin also ceases to be a legal tender, and any person attempting to pass it is liable to be fined 40 shillings (s. 17). There does not appear to be any reason for making it an offence to deface a coin. A coin is the property of the owner for the time being, and ordinarily a man may make any use that he likes of his own property, provided only that he does not injure anybody else thereby. Thus it is no offence to bore a hole in a coin for the purpose of wearing it as an ornament, to split a sixpence for the purpose of using it as a lover's token, to hammer a shilling into a ring, or to melt down coin in order to convert the metal to other use. But, of course, if the owner of a coin chooses to treat it as an ordinary article of property and bore a hole in it or otherwise impair it, it ceases to be a coin, and becomes a mere trinket, which cannot be used for paying a debt.

CHAPTER II.

BANK-NOTES.

BANK-NOTES are of two classes, namely, those issued by the Bank of England, which may be called for distinction "Bank of England notes," and those issued by other banks, which may be called "country bank-notes;" the fact being that no bank in London, except the Bank of England, is allowed to issue notes, so that all bank-notes other than Bank of England notes are issued by country bankers.

Bankers are people who undertake to take care of other people's money for them and return it when desired, and the people who entrust their money to the bankers are called the "customers" of the bank. But in law the relation of banker and customer is that of debtor and creditor, and not that of a trustee or holder of a deposit of money to the owner of the money. The bankers are not bound to lock up the money deposited with them in drawers and let it lie idle; but they are at liberty to turn it to account in any way they please, as by investing it on securities bearing interest, or lending it at interest to persons of good credit. So that a banker's trade may not inaptly be described as borrowing money from all persons willing to lend it without interest, and lending it to others willing to borrow it at interest. In the absence of any special arrangement, it is part of the bargain between the banker and the customer that the banker shall be willing to repay the customer the whole or any part of his money whenever required, during banking hours, on any day except a Sunday or a bank holiday. All money held on these terms is said to be "on

current account." An arrangement, however, is often made to the effect that money shall not be withdrawn without notice being given some specified time, usually a week, before it is wanted. In this case the money is said to be "on deposit account," and bankers always allow a little interest on money so deposited, the rate of interest generally varying with the rate of discount allowed, for the time being, by the Bank of England, the same being called the bank-rate. This rate is fixed every Thursday at a meeting of the governors of the Bank of England and publicly announced forthwith.

The mode in which a customer demands the repayment of money from his banker is by means of a cheque, which will be described later. Now it often happens that a customer, wishing to withdraw money from a bank, would be willing to take, instead of money, a written promise by the banker to pay the sum to any person producing the document containing the written promise. Such a document would be less cumbrous to carry than a sum of money; it would be more easily transmissible from place to place by post, and if the bank was in good credit, it would bear the full value of the sum named in it, since it is all one to receive £5 say, and to receive a document which can be changed into £5 whenever the holder wishes. Now such a document as this is a bank-note. It is a piece of paper readily exchangeable for coin, and passing in fact current as a coin of high denomination.

Before proceeding further it will be well to point out the difference between Bank of England notes and country bank-notes. The Bank of England originally consisted of a number of persons who made a loan to the Government in 1694 (Stat. 5 W. & M. c. 20), and the Bank has always continued to be the Government bankers, receiving the public money and making advances to the Government. In return for the favours thus bestowed, the country has thought fit to grant it certain privileges. One of these privileges has been to give it something like a monopoly of the right of issuing notes in the metropolis and its neighbourhood, by forbidding private

bankers to issue notes within three miles of the Bank of England (see Stat. 9 Geo. IV. c. 23, s. 1), and forbidding joint-stock banks to issue notes within 65 miles of the same spot (Stat. 6 Ann. c. 22; 39 & 40 Geo. III. c. 28, s. 15; 7 Geo. IV. c. 46; 3 & 4 Will. IV. c. 83). Except within these respective limits, however, any banker or joint-stock bank might formerly have issued any amount of notes, provided they took out a licence for the purpose, and paid certain duties. In the year 1844, however, it was thought that an excessive issue of notes was calculated to produce commercial panics, and an Act was passed to limit the issue of notes. This Act (7 & 8 Vict. c. 32), which is called the Bank Charter, restricted the right of issuing notes to banks then exercising it, and restricted the country banks from issuing notes beyond the amount for which they had been issuing them during the then preceding half-year. With respect to the Bank of England, it provided that it should only issue notes to the amount of the coin and bullion held by it ready to answer them, and to the amount of £14,000,000 beyond. And it provided that the coin and bullion held to answer the notes should be separated from the general fund of the Bank's property, and set apart in a department to be called the "issue department," and that £14,000,000 of approved securities should also be put in that department to cover the other notes issued. The Act also provided a method by which, with due regard to vested interests, the rights of country banks to issue notes should in time be transferred to the Bank of England; and by these means, the amount of notes which the Bank is authorized to issue beyond the value of the coin and bullion in the issue department has been increased by several millions, and the amount of the approved securities to be set apart to answer the notes has been increased to the same extent.

The Bank is also bound to publish weekly statements of account. These statements appear in many newspapers, and the above remarks will show the meaning of the principal points in them. The accounts are made up to each

Wednesday evening, and are published in the papers on the following Friday.

It ought also to be stated that the duties payable in respect of bank-notes were formerly collected, in the case of country bank-notes, by means of stamps impressed upon the notes, but the Bank of England paid an annual sum to the Government for the right of issuing its notes on unstamped paper. In the course of time, it was thought desirable to allow other banks to compound in like manner for a similar right, and an Act of Parliament was passed for that purpose (9 Geo. IV. c. 23). Country bankers generally avail themselves of this privilege, but some still act on the old custom of issuing notes on stamped paper, and the Stamp Act of 1891 provides for their case (54 & 55 Vict. c. 39, ss. 29-31).

But the most important difference between Bank of England notes and country bank-notes, is that the former have been made a legal tender. This, as explained in a former chapter, means that a debt may be lawfully paid with them, while country bank-notes may be refused. It will be observed that the provisions which are made respecting the Bank of England are such as to render it perfectly certain that it will be able to pay its notes in gold, while there is nothing to compel a country bank to hold a fund in hand ready to answer its notes. Hence, it may happen, and does sometimes happen, that a country bank stops payment; and, if it is a private bank, its members become bankrupt, and, if it is a joint-stock bank, it is wound up. In these cases, of course, the persons who hold its notes at the time of the stoppage will probably suffer some loss, and only receive such a dividend as the bank may be able to pay, instead of receiving the full amount of the notes. In order, however, to keep up the credit of country bank-notes, which become in fact a portion of the currency of the country, our law gives the holders of them certain privileges over other creditors in case of the failure of the bank issuing them.

From a consideration of what has been said, it may easily be understood how it happens that Bank of England notes

circulate all over the country, and indeed one may say all over the world, while country bank-notes only circulate in the neighbourhood of the banks which issue them, where those banks are known and trusted, and are readily accessible to the holders of the notes. It is quite possible that many of the readers of these lines have never seen a country bank-note, but all are no doubt familiar with the sight of a note of the Bank of England.

With respect to the form of a Bank of England note, it will be seen to contain the name of the bank, the words "I promise to pay the bearer on demand the sum of (so many) pounds," the signature of the manager, a date repeated twice, and a composite number repeated twice, the same being a number preceded by an algebraic fraction. No two notes are precisely alike in amount, number, fraction, and date; so that if these are known, a note can be identified: indeed the amount, number, and fraction are sufficient to identify a note, or the amount, number, and date.

It is, therefore, a prudent act for any person to make a memorandum of these particulars respecting any note which he receives. This is always done by bankers, who also on handing out a note make a memorandum of the same; so that if a man receives a note from his bankers, and makes no memorandum of its marks, and loses the note, he can ascertain its number on applying to his bankers.

The Bank of England never issues the same note twice. It has a peculiar manufactory for making the paper for its notes, and a printing-press of its own, established within the Bank itself, for printing its notes. Here it prints sufficient notes to meet its issue, which amounts to many thousands per day. All notes which are paid in are defaced by cutting a small piece out of them by means of a machine, and these are then sorted and arranged according to their numbers and kept for five years. The Bank, therefore, by referring to its files of returned notes, can tell at a moment's glance whether any note once issued is still in circulation or not.

The owner of a bank-note has the right to demand from the bank the sum named in the note, on producing the note and giving it up. If payment of the sum should be refused him, he may bring an action against the bank and recover the money. It is, however, the custom of the bank to require the person presenting a note to write his name on the back of it, and this is certainly a reasonable requirement, and would doubtless be held to be legal, if any one contested it.

The way in which a bank-note, with its accompanying rights, may be transferred is very simple. It is, in fact, the same as that in which money may be transferred. All that is required is that one person should give it to another with the intention of making it his. Thus, bank-notes are said to pass by delivery. A delivery is complete as soon as the giver has done all things that are required to be done on his part to complete it. Therefore, if he has put a note down on a counter, and called the other person's attention to it, a delivery is complete, and he cannot recall it, although the other has not taken it up, or expressed himself satisfied with it (*Chambers v. Miller*, 13 C. B. N. S. 125).

It may be well to illustrate this point by stating shortly the facts of two cases which actually occurred. In one of these (*Smith v. Mundy*, 3 El. & El. 22) a Mr. Smith had contemplated entering into a partnership with another person; and, having to pay £500 for his share in the business, he thought it advisable to apply part of that sum in paying his future partner's existing debts, and sent one of the creditors the halves of two notes for £10 and £20 respectively. Then, before he had sent the other halves, the arrangement for a partnership fell through, and he brought an action against the creditor to recover the two halves of the notes which he had sent. It was held that he was entitled to recover them on the ground that the act of sending the notes was inchoate only and not complete. Blackburn, J., in giving judgment, said—

“Till the payment should be complete, the half-notes sent to the defendant remained the property of the plaintiff. It clearly was not the

intention of either party that each of them should have the property in the halves in his possession. Suppose that the plaintiff had held out a whole note to the defendant, and that the defendant had taken hold of it, the property in it would not have passed to the defendant till the plaintiff had entirely relinquished his hold. So long as the plaintiff retained a partial control over the note he would have been at liberty to change his mind and refuse to hand it completely over to the defendant. So in the present case, there could be no change in the property in the notes till both halves had come into the defendant's possession."

In the other of the two cases above alluded to (*Chambers v. Miller*, 13 C. B. N. S. 125) the plaintiff had presented at the defendants' bank a cheque for £151 10s. 6d. drawn by one of their customers. The cashier took the cheque, made up its amount in notes and coins, put it on the counter before the plaintiff and went away. The plaintiff then counted the money drawing it towards him, and was counting it a second time when the cashier, who had in the meantime inspected the customer's account and found it overdrawn, returned, stated that the cheque would not be cashed, offered it back and re-demanded the money. The plaintiff thereupon put the money in his pocket and endeavoured to make off with it; but the men in the bank stopped him and took it back by force. He thereupon brought an action, and it was held that the money had become his, and judgment for the amount was given him accordingly; the fact that he had not done counting it, or declared himself satisfied with it, left him at liberty to object to any of the notes or coins, but gave no right to the other party to reclaim the payment.

The law respecting the title to bank-notes is equally simple with the law respecting their transfer. It is in fact the same as the law relating to the title to money. It is not necessary for a person to whom a bank-note is offered to make any inquiry respecting the title of the person offering it. It is sufficient for him that he takes it in the ordinary course of business, in discharge of a debt, or in exchange for money or goods, and that he is not aware that the person from whom he takes it had no right to it. He is then called a purchaser for

value without notice of any adverse right. The law on this point was decided in a case well known to lawyers under the name of *Miller v. Race* (1 Burr. 452). The plaintiff in that action received a note in the ordinary course of business, but when he took it to the bank they refused to pay it, because it had been stopped in manner about to be described. He therefore brought an action against the bank, and at the trial they proved that the note had previously belonged to another person, and had been stolen from such person. The plaintiff, however, proved that he had come by the note honestly in the course of business, he had given goods or money for it, and knew nothing of the theft. And it was held that the bank were bound to pay the amount of the note to the plaintiff.

Here we see of how much, or perhaps we ought to say of how little value, the process of stopping a note is. It will only prevent the thief himself from getting it cashed at the bank. If the thief succeeds in passing the note to any one else, the person from whom it was stolen will suffer the loss. Still, small protection as it is, it should not be omitted, for it fortunately happens that thieves do experience considerable difficulty in passing a stolen note, especially if it be of large amount. The process of stopping a note consists in giving the bank a written request to refuse payment of the note, and of course the person giving it must undertake to indemnify the bank against all the consequences of acting upon his notice. Thus in the case of *Miller v. Race* mentioned above, the person who stopped the note, no doubt, had to pay the bank all their costs of the action. When a note, however, has been stolen or lost, the real owner of it does not lose his right to recover the amount of the note from the bank, unless the note finds its way into the hands of a purchaser for value without notice. If the note has not been presented by any one else, the loser of it may still recover the amount of it from the bank. But to do this, he would have to prove that he acquired the note properly, and also that he lost it; and he would further have to give

the bank an indemnity in case they should ever have to pay the note to any one else (*McDonnell v. Murray, Ir. Com. Law Rep.* 495, Exch.). The case would be the same if a note were destroyed.

A person who has only lost half a note, of course, stands in a more favourable position than one who has lost a whole note, and he may recover the amount of the note from the bank on proving that he became properly entitled to the whole note, but lost half of it by accident (*Redmayne v. Burton*, 2 L. T. N. S. 324). At the same time, a mere half note is valueless for purposes of circulation; no one would be justified in taking a half note in exchange as though it were a whole one. The person in possession of the half note should go to the bank and prove there that he became properly entitled to the whole note. We now see the reason for the custom of cutting a bank-note in half in order to send it by post, and sending the two halves in two envelopes. It is only in the very improbable case of the two halves being stolen by one thief that the note can be lost. One of the halves is pretty certain to arrive safely, and the bank will pay on it.

Attention has already been called to the fact that a bank-note bears a number preceded by an algebraic fraction printed in two places. One of these places is on the left-hand side of the note, and the other on the right, and there can be little doubt that the reason that the number is thus printed twice is to preserve the identity of each half of a note; so that notes may safely be cut in two, and there will never be any doubt as to which pieces belong to each other. It may also be noticed that in Bank of England notes the amount of the note is stated twice, once in small letters and once in large quaint letters, and the printing is so arranged that the description in small letters falls on the right-hand half of the note, while the large quaint letters are placed on the left. It is probable that this is also done in order that each half may bear the amount on the face of it.

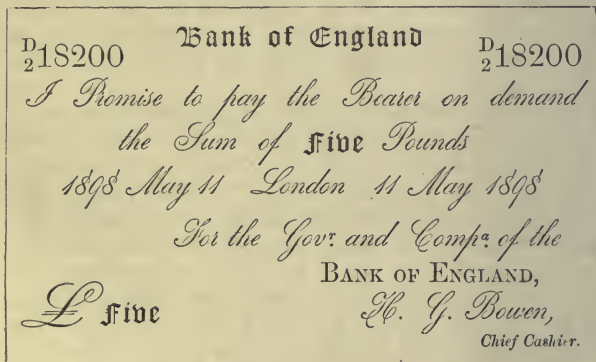
Lastly it may be observed that the note bears a date,

which also occurs twice, once on each half of the note. The date is the date of the printing of the note, and its issue from the issue department to the banking department. The date serves to distinguish the note and identify its two halves, and to fix the time of its issue ; but it is not clear that it serves any other purpose. By our law a common debt cannot be recovered after a lapse of six years (21 Jac. I. c. 16, s. 3), and it has been thought by some writers that the liability of a bank on its notes comes within this law ("Byles on Bills," c. xxvi.). The officials of the Bank of England, however, consider that there is no limit of time for the liability of the bank on its notes, and this view appears to prevail in the United States ("Banning on Limitations," 278, citing *Hensdale v. Larned*, 16 Mass. R. 68). We may add that various Acts of Parliament have been passed from time to time fixing limits of time within which various actions may be brought, and these are called Statutes of Limitation. The principal statute of this nature is that above cited of the date 1623, the twenty-first year of James I.

It may be well also to allude to another custom which prevails, which is that many people before taking a note, require the person presenting it to them to write his name on the back, or as it is called, "endorse" it. This is a precaution which is popularly rated at over its real value. It has been mentioned above, that a person taking a note in the course of business, gets a good title to the note notwithstanding any irregularity which may have occurred in its previous history ; so that supposing the piece of paper to be a real note, the person taking it could not afterwards require the person from whom he took it to take it back, simply because some one else made a claim to it. The chief object gained by an endorsement therefore would seem to be, that in case the piece of paper should turn out not to be a real note but a forgery, the signature would show conclusively from whom it came, and would render it easy for the person who took it to recover its amount. It is true that by law an endorser guarantees the

payment of a note, but the guarantee would be discharged unless the note were presented at the bank for payment within a reasonable time, which generally means the next day. In the case of country bank-notes a guarantee for their payment may sometimes be material, but the idea of a private person guaranteeing the payment of a Bank of England note, sounds somewhat laughable. Moreover, as Bank of England notes are a legal tender, it seems to follow that it is not open to any one to decline to take them without having them endorsed, but a court of law might consider that the requirement of an endorsement was a reasonable precaution, and refuse to sanction a refusal to comply with it.

In order to enable the reader to follow the remarks contained in this chapter, we append a representation of a modern note of the Bank of England, so far as our type will allow.



CHAPTER III.

CHEQUES.

It has been mentioned that bankers are people who are willing to borrow money from others on the terms of being bound to repay the whole, or any part of it, at any time upon demand. The proper mode for a customer of a bank to demand the repayment of any of his money is by means of a written order called a "cheque." The order must be written on paper having a penny stamp impressed upon it; or, if it is written upon other paper, a penny stamp must be affixed to it (Stamp Act, 1891), and must of course be cancelled. A penny postage-stamp may now be used for this purpose (Stamp Act, 1891, 54 & 55 Vict. c. 39, s. 7).

It is usual for bankers to supply their customers with books containing forms of cheques on stamped paper, which they have printed for themselves and take to Somerset House to be stamped, and supply to their customers at the price of the stamps, that is to say at the rate of a penny a cheque.

The form of a cheque of a London banker is somewhat as follows:—

Hc 8820.

London, _____, 18_____.

Messrs. A. B. C. & Co.

Pay to _____, or Bearer,

£

It contains (1) a number preceded by a letter or letters, (2) the word London and a space for a date, (3) the name of the bank or bankers to whom it is addressed, (4) the words "pay to" and a space followed by the words "or bearer," or followed by the words "or order," (5) a space which is for the insertion of the amount in words, (6) a space to the left for the insertion of the amount in figures, and (7) a space to the right for the signature of the person drawing the cheque.

A few words should be said with respect to each of these points.

(1) The combination of letters and figures at the left top corner varies with every cheque, and is intended to enable any cheque to be identified.

Cheque-books are always printed with perforated lines to enable the cheques to be torn out; and each cheque is thus attached to a portion of a page called a "counterfoil," which bears the same letters and number as the cheque, and which remains in the book when the cheque is torn out. If, then, the drawer of the cheques enters upon the counterfoil the amount of each cheque and the name of the person to whom it is made payable, he will be able to identify every cheque which he issues.

(2) The word London appears to be now immaterial, and is probably only inserted from habit. Formerly cheques were not subject to any stamp-duty if payable to bearer and only drawn and circulated within fifteen miles of the place of payment. The law then required that every cheque should specify the place where it was issued: and it was therefore material, at that time, to show that a cheque on a London banker was issued in London (55 Geo. III. c. 184; 9 Geo. IV. c. 49). Now the law has been altered, and all cheques are subject to a stamp-duty of one penny, but the custom for London bankers to put the word London on their cheques is still maintained.

(3) With respect to the date, it is most convenient that it should be filled up with the day on which the cheque is drawn.

There is no legal objection to its being filled up with a previous day, but we shall see hereafter that in some cases inconvenience might be caused thereby. A cheque for a sum exceeding £5 ought not to be filled up with a future date. A cheque filled up with a future date only gives a direction to the bankers to pay on or after that date (*Forster v. Mackreth*, L. R. 2, Ex. 163); and the law regards a document directing a future payment in a different light from one directing an immediate payment. Such a document is called "a bill of exchange;" and, as it is not such a common incident of every day business as a cheque is, a higher stamp-duty is imposed upon it if its amount exceeds £5. A person therefore issuing a cheque for a sum exceeding £5 with a future date, would be exposed to the penalty imposed on the issue of an insufficiently stamped bill of exchange namely, a fine of £10 (Stamp Act, 1891, s. 38).

In filling in the date of a cheque care should also be taken to write it in such a way that it cannot be readily altered; for we shall see hereafter that a cheque is intended to be presented speedily, and the recipient of an old cheque stands in a different position from the recipient of a new one. It is therefore material to write the number of the day immediately after the name of the month, when the number consists of a single digit, otherwise 1st might be turned into 21st or 31st; and it is also material to add the termination of the ordinal number, and to place it close to the right of the upper part of the cardinal number, when the number is 1, 2, or 3, otherwise a figure might be added after the cardinal number; thus, in one case, a date of March 2 was turned into March 26, and a stolen cheque was thereby passed (*Vance v. Lowther*, 1 Ex. D. 176, Jan. 1876). It is also material to write every figure so that it cannot readily be turned into another figure; and for that purpose to write the figure 1 with a line leading up to the top of it, and not as a single downstroke, for in the latter case it can easily be turned into a 4 or a 7.

(4) With respect to the space between the words "pay to" and "or bearer," it may be filled up in many ways. First, if

the drawer of the cheque himself goes to the bank to get it cashed, he should write the word "self" in it. Secondly, if the words "or bearer" are left on the cheque, the space may be filled up with the name of any person or thing: for instance, "pay fiddle-stick or bearer," or the space may be left unfilled. In all these cases, the cheque is said to be "payable to bearer," the meaning of which expression will be explained below. Thirdly, the space may be filled up with the name of some person followed by the words "or order," in which case the pen should be drawn through the words "or bearer," and the cheque is said to be drawn "payable to order," an expression which will also be explained more fully below. This is, indeed, the most usual way of drawing cheques, and bankers keep books of forms of cheques with the words "or order" ready printed instead of the words "or bearer," and these forms are now most frequently used. If the word "bearer" is struck out and the name of a payee is inserted, the cheque becomes payable to the order of the payee, just as if the word "order" were substituted for "bearer."

(5) The two spaces for inserting the amount of the cheque in words and figures next demand attention. In filling in a cheque, care should be taken to express the amount perfectly distinctly in both cases. Also it is desirable that the words and figures should be so arranged as to prevent the possibility of their being subsequently altered. This can best be explained by giving instances.

In one case, which is known by the name of *Young v. Grote* (4 Bing. 253, 12 Moore, 284), a husband on leaving home had given his wife several blank cheques, ready signed, for her to fill up in case she wanted money. In course of time, she requested one of her husband's clerks to fill in one of the cheques for her for the sum of £52 2s. He accordingly wrote that amount in words and figures on the cheque, but he began writing the word "fifty" about two inches from the left end of the space in words, and commenced it with a small "f," and he likewise put the figures a short distance from the letter

£ which stands at the beginning of the space left for figures ; then, when he was sent to get the cheque cashed, he inserted the words "three hundred and" before the words "fifty-two," and likewise put a 3 before the figures. The bankers duly cashed the cheque, giving the clerk £352 2s., and he then absconded with the money. The question, which was tried, was whether the loss of £300 should fall on the banker or the customer ; and it was held that the loss must fall on the customer, because the forgery was one which the banker could not have discovered, and it was rendered possible by the negligent way in which the cheque had been drawn.

It is necessary also to draw the cheque so that the amount of it cannot be increased by adding anything to the right of the words and figures. Several cases have occurred, in which a cheque for £8 has been altered to £80 by adding "y" to the word eight, and a cipher to the figure. This is the amount which can most easily be altered ; and next to it come six, seven, and nine, which only require an addition of "ty" to the word and a cipher to the figure. In all these cases, the word "pounds" should be written immediately after the word describing the number, and a dash or scroll should be placed to the right of the figure. It is, of course, more difficult to add anything to large clear writing than to writing which is small and indistinct.

That portion of a cheque on which the amount is to be written is usually covered with a very minute pattern, so printed that if any attempt should be made to obliterate the writing upon the cheque, it would obliterate the pattern also, and render any forgery easy of detection.

We may here observe, once for all, that the person who signs a cheque is called "the drawer," the banker on whom it is drawn is called "the drawee," and the person named in it, as the person to whom payment should be made, is called "the payee."

With respect to the rights which belong to the lawful holder of a cheque, it will be observed that a cheque is a mere

direction given by the drawer to the banker to pay a sum of money. The banker, therefore, is under no liability to the holder of the cheque. He may, or may not, pay it. If he pays it, the holder of the cheque, of course, gives it up to the banker, and takes the money and may keep it. The payment, if once made, cannot be recalled by the banker (*Chambers v. Miller*, 13, C. B. N. S. 125).

If the banker does not pay the cheque, he is said to "dishonour" it; and thereupon the chief right of the holder of the cheque is that he may sue the drawer for the amount of it; for the drawer of a cheque is bound to pay it if it is dishonoured by the banker. We shall see presently that the holder of a dishonoured cheque has certain rights also against the person from whom he took it, and sometimes also against other persons through whose hands it has passed; and we shall see that notice of the dishonour of the cheque must be given immediately both to the drawer and the other parties liable.

We will next proceed to consider the mode in which a cheque can be alienated or transferred from one person to another, and we may here mention that alienation is a general word for the transfer of property from one person to another, while the words "transfer," "assign," "grant," and "convey," all have special meanings, though they are also used generally as equivalents for "alienate." The word "alienor" is used for the person alienating property, and the word "alienee" for the person to whom it is alienated; and, in like manner, we find the words "transferor" and "transferee," "assignor" and "assignee," "grantor" and "grantee."

If a cheque is drawn payable to bearer, it may be alienated in the same manner as a bank-note; that is to say, it is only necessary that the owner should give it to another person with the intention of making it his. Cheques payable to bearer are, therefore, said to pass by delivery; and indeed the law is the same with respect to all documents which are payable to bearer.

If a cheque is drawn payable to "John Smith, or order," and John Smith wishes to pass it, then he must not only

deliver it to the intended alienee, but he must write an order upon it authorizing the bankers so to pay it. If he merely writes his name upon the back of it, that is a sufficient order, and makes the cheque payable to bearer. This is called an "endorsement in blank," and the person who so writes his name is said to "endorse" the cheque. He may, however, write on the cheque an order in the form—

"Pay Thomas Brown, or order,
"JOHN SMITH."

This is called a "special endorsement," and makes the cheque payable to the order of Thomas Brown, and if he wished to pass it again he would have to write a further order on the back of it, and he might make such order either "blank" or "special." A cheque may be thus endorsed any number of times. A person, to whose order a cheque is made payable by a special endorsement, is called an "endorsee" of the cheque. If an endorsee of a cheque takes it to the bank for payment, he must write his name on the back in order to justify the bankers in paying it.

The origin of the term endorsement in blank is, that it is usual for a person making such an endorsement to leave a blank space above his name, and it is then physically possible and legally allowable for the person to whom it is given, or for any subsequent holder of it, to make it payable to his own order, or to the order of any other person, by writing in this blank space an order in the form, "Pay William Jones, or order."

If a cheque is drawn in the form, "Pay John Smith" simply, it is equivalent to "Pay John Smith, or order," and the same rule applies to an endorsement (Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 8, § 4). Hence, if the word "bearer" be struck out on a cheque, the cheque becomes payable to the order of the payee.

Let us next consider the meaning and effect of crossing a cheque, a subject which is now regulated by the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, ss. 76-82.

The drawer of a cheque, or any holder thereof, may draw two transverse lines across it, this is called "crossing the cheque in blank" or "crossing it generally." A cheque which is crossed, can only be paid through some banker. It is usual, but not necessary, to write the words "& Co." in the right-hand part of the space between the two lines.

The drawer of a cheque, or any holder thereof, may draw two lines across it and write the name of some bank between them. This is called a "special crossing." Also any holder of a cheque crossed in blank may make the crossing special. A cheque, which is specially crossed, can only be paid through the bank named in the crossing.

If a cheque should be crossed with the names of two banks, the banker on whom it is drawn ought to refuse to pay it (s. 79, § 1).

Many people adopt the practice of crossing a cheque in blank or specially, and adding the words "account of payee" or "account of A B," naming the payee. The intention of this form of crossing is to direct the bankers to whom it is paid to place the proceeds to the account of the payee in their books, and so to ensure that no one, except the payee named in the cheque, shall receive the amount of it. The bankers of the payee, however, themselves become purchasers for value of such a cheque the moment that they place the amount of it to his credit, which they ordinarily do directly they receive it. If, therefore, the drawer of the cheque becomes entitled to stop it as against the payee, and stops it accordingly, he may nevertheless be liable to pay the amount of it to the payee's bankers, if the payee's account is overdrawn. Indeed, it is not clear that the words "account of payee" restrict the negotiability of the cheque in any way (*National Bank v. Silke*, 1891, 1 Q. B. D. 435).

Parliament has, however, enacted that the words "not negotiable" may be written upon a crossed cheque. The effect of writing them is that any person taking the cheque gets no better title to it than the person from whom he took

it (Bills of Exchange Act, 1882, s. 81). The law with respect to the title of other cheques will appear from what is about to be said.

Our law merely regards cheques as a convenient mode by which a single payment may be made by one person to another, and does not encourage them as a means of providing the country with a paper currency, that function being discharged by bank-notes. With respect to cheques, therefore, the law considers that they ought to be presented for payment within a reasonable time.

In some old cases the courts laid down rather strict rules as to the limits of reasonable time, requiring every cheque to be presented pretty well as quickly as was practically possible. But it has now been enacted that (Bills of Exchange Act, 1882, s. 74, § 2) "in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case."

Practically, the usual course, with respect to cheques in London, is that the recipient of a cheque sends it to his bankers. All London bankers send once a day a clerk, with all such cheques, to a building in the city called the "clearing-house." Here the clerks exchange the cheques drawn on their respective banks, and pay the differences by means of cheques on the Bank of England, where they all keep deposits for that purpose. The clerks meet at the clearing-house a little before 4 p.m., that being the close of banking hours.

Among country banks there are, doubtless, some special methods of exchanging cheques, resembling the London clearing-house. But, in the absence of any special method, a country bank sends cheques to its London agents, who exchange them with the London agents of the banks on which they are drawn, by means of the London clearing-house; and the last-mentioned agents transmit them to the banks on which they are drawn. In the accounts between a country bank and its London agents, it receives credit for all cheques

transmitted by it, and is debited with the amount of all cheques drawn upon it and paid by the agents.

We see here that when once a cheque is paid into a bank, it is presented for payment with due expedition ; but the law does not specify precisely the time which may elapse between the receipt of a cheque and its transmission, by the recipient, to his own bankers. Any one wishing to avoid any possible risk in this respect, could only make a rule to post to his bankers each day at the close of business, all cheques received by him during business hours that day. People in a large way of business doubtless do this, while others, who receive fewer cheques, allow longer intervals to elapse. Probably, all persons transmit cheques to their bankers at least as frequently as the close of each week ; and it may well be that the trouble attendant on a daily transmission would be a greater tax than the risk attending this little delay ; but it must be remembered that the law has not at present said that such delay is reasonable.

The consequences of retaining a cheque for a longer period than the reasonable time for presenting it are not very serious. If the banker has assets, that is to say, sufficient money in his hands belonging to the drawer of the cheque, he is just as much bound to pay it after an interval as immediately ; that is to say, he owes a duty to the drawer to pay the cheque, but not to the holder. But if a cheque were six years old, the banker would be bound to refuse to pay it, because the liability of the drawer upon the cheque might then be barred by the Statutes of Limitation. And if any unusual interval elapsed, the banker might prudently inquire of the drawer before paying the cheque.

Again, if the drawer had assets at the bank when he drew the cheque and subsequently withdrew them, and the banker in consequence thereof dishonoured the cheque, the drawer would be liable to pay the holder the amount of the cheque, just as he would have been if the cheque had been presented in time, and found him without assets at the bank (*Robinson v. Hawksford*, 9 Q. B. 52).

In the third place, however, if the drawer had assets at the bank at the time of drawing the cheque, and did not withdraw them, and the bank continued to do business during the reasonable time for presenting the cheque (*Robson v. Bennett*, 9 Taunt. 388), and subsequently stopped payment, the holder would have no remedy against the drawer. Here the cheque would have been paid if presented in time, so that the loss of the assets was caused by the delay on the part of the holder. The holder, therefore, would suffer the loss; but in carrying in claims in the liquidation of the bank, the holder would be admitted as a creditor, or "prove," as it is called, for the amount of the cheque, and the drawer would prove for the amount of his balance at the bank with a deduction of the amount of the cheque (Bills of Exchange Act, 1882, s. 74; see also *Alexander v. Burchfield*, 3 Scott N. R. 555; *Bailey v. Bodenham*, 16 C. B. N. S. 288; 33 L. J. C. P. 252).

With respect to the title to cheques, a cheque payable to bearer stands on the same footing as a bank-note, at least for a reasonable time after its issue. That is to say, possession is sufficient evidence of title, and a person taking one in the course of business, a "purchaser for value without notice of any defect in the title" in fact, gets a good title to it.

In the case of a cheque payable to order, mere possession is not sufficient evidence of title, but the holder must also show that it has been properly endorsed, so as to have been made payable to his order or to bearer; and, if any endorsement is forged, it does not confer a good title. But, if all the endorsements are genuine, a purchaser for value without notice of any defect gets a good title to it, at least, if he takes it within a reasonable time after the issue of the cheque (*Watson v. Russell*, 34 L. J. Q. B. 93).

During the reasonable time for the circulation of a cheque, it is said to be "current," but, when it appears upon the face of it to have been in circulation for an unreasonable time, it is said to be "overdue." A person taking an overdue cheque, takes it subject to all defects of title affecting it. The law

does not precisely define the limits of a reasonable time for the circulation of a cheque, but leaves it as a question of fact to be decided by the jury whenever a case is tried (*Bills of Exchange Act, 1882*, ss. 36, 73, superseding the decision in *London and County Banking Co. v. Groome*, 8 Q. B. D. 288, Dec. 1881).

It follows, therefore, that there is a risk attendant on taking a cheque, if the very short interval called a "reasonable time for presentment" has elapsed since the date of it. Before taking such a cheque, it would be desirable to inquire if possible of the drawer, whether the cheque was properly in the hands of the holder, or to inquire of the bank whether the cheque had been stopped. For the drawer of a cheque may, at any time, stop it by giving notice to the bank not to pay it. He must, of course, remember that he will himself be liable to pay it, if during the reasonable time for its circulation, it comes to the hands of a purchaser for value without notice of any defect in its title.

The position of a person who takes a cheque under circumstances which do not give him a good title to it, deserves consideration. It has been mentioned that the principal rights of the lawful holder of a cheque are: (1) to keep the money if it is paid by the bankers, and (2) to sue the drawer for the amount of the cheque if it is not paid by the bankers. The holder of a cheque would not have either of these rights if he had not a good title to the cheque. If the cheque were dishonoured by the bankers he would not be entitled to sue the drawer, and if the cheque were paid by the bankers he would not be entitled to keep the money; but it might be recovered from him by the real owner of the cheque (*Vance v. Lowther*, 1 Ex. D. 175, Jan. 1876; *Kleinwart, Sons & Co. v. Comptoir National d'Escompte de Paris*, 1894, 2 Q. B. 157; *Lacave & Co. v. Crédit Lyonnais*, 1897, 1 Q. B. 148).

It was also mentioned above that a person taking a cheque has certain rights against the party from whom he took it, and

possibly also against others through whose hands the cheque has passed. We will proceed to consider what these rights are, and how they are affected by any defect in the title to the cheque.

First, then, every person who writes his name on the back of a cheque, guarantees the payment of it to every subsequent holder, unless he adds to his name some words negating this guarantee (Bills of Exchange Act, 1882, ss. 56, 16). The French words "sans recours," or the equivalent English "without recourse to me," are proper words to use for the purpose. In practice, these words are never used in endorsing cheques, for the simple reason that no person would give change for a cheque, or accept it in payment, if such words were added. We have already seen that it becomes necessary for the payee, of a cheque payable to order, to write his name upon the back in order to make it over to some other person. This signature, therefore, involves a guarantee of the cheque. It is also usual for the recipient of a cheque payable to bearer, to require the person passing it to him to endorse it in order to guarantee its payment. The guarantee of an endorser only extends in favour of subsequent lawful holders of the cheque, and it would be discharged if the cheque were not presented for payment within a reasonable time. Furthermore, if the cheque were presented within a reasonable time and dishonoured, it would be necessary for the holder to give notice of the dishonour to each of the endorsers immediately, otherwise they would be released from their guarantees (*Prideaux v. Criddle*, L. R. 4 Q. B. 455, May, 1869; *Foster v. Parker*, 2 C. P. D. 18, Nov. 1876). Practically the notice of dishonour should, in all cases, be posted not later than the forenoon of the day following the dishonour (Bills of Exchange Act, 1892, s. 49, § 12). Notice of dishonour must also be given immediately to the drawer of the cheque, otherwise he also will be discharged from liability (Bills of Exchange Act, 1882, s. 48). If the holder does not know the addresses of the drawer and endorsers, he is bound to use reasonable

diligence in inquiring for them; and there are some cases in which notice of dishonour is unnecessary, the principal case being that, if the drawer of the cheque had no assets at the bank to meet it, there is no need to give notice to him (Bills of Exchange Act, 1882, s. 50).

It is also the law with respect to cheques, and indeed with respect to all bills of exchange, that a person who passes one guarantees the title of it to the person to whom he passes it, whether he writes his name upon the back of it or not. Observe that guaranteeing the title is not equivalent to guaranteeing the payment; one who guarantees the title only, guarantees that the recipient shall have the right to sue the drawer of the cheque if it is not paid, and the other rights of a lawful holder of the cheque (Bills of Exchange Act, 1882, s. 58). If, therefore, it turns out that the signature of the drawer, or of one of the endorsers, was a forgery, and payment of the cheque is refused at the bank in consequence, each person who took the cheque may recover the price which he paid for it from the person from whom he received it. This would throw the loss back upon the person who committed the forgery. The forger would, probably, be found to have absconded, or to be worthless, and the result would be that the loss would fall upon the person who took the cheque from the forger. This is clearly just, as that person would have been guilty of negligence in trusting a person who was not trustworthy.

A person passing a cheque payable to bearer without endorsing it, is called a "transferor by delivery." According to the Bills of Exchange Act, 1882, such a person does not guarantee the payment of the cheque, but only (1) that the cheque is what it purports to be, (2) that he has a right to transfer it, and (3) that he is not aware of any fact which renders it valueless (ss. 58, 73). Previous to this Act, the decisions of the law courts had gone on the principle that a transferor by delivery guaranteed the payment as well as the title of the cheque to the person to whom he passed it. The cases in which such

transactions took place were usually either (1) when a cheque was handed over in payment, or part payment, of some debt, or (2) when change was given for a cheque to accommodate the holder of it. In the first case, the debt was not satisfied unless the cheque was duly paid. It sometimes happened that a receipt was given for the sum due, as if it had been paid in cash : in such cases, if the cheque was dishonoured, the receipt was set aside and the original claim was still enforceable. In the second case of giving change for a cheque, if the cheque was dishonoured the recipient of it could recover back the change which he had given ; but he was bound to give immediate notice of dishonour to the party liable (*Woodland v. Fear*, 7 E. & B. 519 ; *Rickford v. Ridge*, 2 Camp. 537 ; *Moule v. Brown*, 4 Bing, N. C. 266).

The Bills of Exchange Act, 1882, may well be held to leave the law unaffected in the first of these two cases, and it is not clear that it alters it in the second either. It is certainly prudent, however, for the recipient of the cheque, in either case, to require the transferor to endorse it, and so make it quite clear that he is liable for the amount of it.

It has been already mentioned, that the general arrangement between banker and customer is, that the banker shall repay the whole or any part of the customer's money, at any time, upon demand. In other words, the banker engages to honour the customer's cheques, if he has assets in his hands sufficient to enable him to do so. If, having assets, he omits from any cause to honour a cheque, the customer may maintain an action against him, and will recover substantial damages for the loss of credit caused by the dishonour of his cheque (*Rollin v. Steward*, 14 C. B. 595). In general, if a contract is broken, the party injured can only recover as damages the pecuniary loss suffered by him in consequence of the breach of the contract. But the injury inflicted upon a man's credit by the dishonour of a cheque is such a serious matter, that substantial damages may be awarded for it without proof of actual pecuniary loss. A breach of promise to marry is another

case in which damages may be recovered beyond the pecuniary loss suffered by the injured party.

A banker is bound to keep his bank open for the presentment of cheques on all days in the year except Sundays, bank holidays, and any day specially appointed by Royal Proclamation to be observed as a bank holiday; but there is no objection to a cheque being drawn and dated upon any of those days (Bills of Exchange Act, 1882, ss. 13, 14). The law does not prescribe the hours during which a bank should be kept open, but only specifies that a cheque should be presented at a reasonable hour. In London, all banks close at 2 p.m. on Saturdays, and 4 p.m. on other week-days, while the hour of opening is 9 a.m.; but in many provincial towns, banks are kept open later on market-days, but close earlier on other days, and the hour of opening is generally 10 a.m.

Of course, all people who keep accounts at banks are constantly paying in and drawing out various sums of money, and it becomes necessary for them to settle their accounts at frequent intervals. For this purpose, the bankers supply them with books called "pass-books," which they send to the bank monthly, quarterly, or as often as occasion may require. When the pass-book is sent in, the banker copies into it all items of receipts and payments since it was last entered up, and returns it to the customer. The customer should then peruse it, and make an objection at once if he considers that there is any error in it.

If the customer considers that the banker has improperly debited him with any sum of money, or refused to credit him with any sum, he can bring an action against the banker, claiming what he considers to be the proper balance due to him. In such action, a decision would be given as to the disputed item, and judgment would be pronounced accordingly.

Bankers cancel all cheques which they pay, and either send them to the drawer when they next return his pass-book to him, or keep them until he asks for them.

Before concluding this chapter, it may be well to draw up a few practical rules, which may be deduced from the principles above laid down.

(1) In drawing a cheque for the purpose of making a payment by post, it is safest to make it payable to the payee's order, and to cross it and mark it as "not negotiable." If that is done it cannot be cashed unless it is endorsed by the payee, and presented through some bankers. The paid cheque will, in due course, be returned to the drawer by his bankers, and as it bears the endorsement of the payee, it will preserve evidence of payment. This may be useful, if the payee omits to send a receipt, or such receipt is lost.

(2) If a payment is made by handing a cheque personally to a creditor, and he signs a receipt for the money, it is still wisest to make it payable to his order; but the crossing of it may well be left to him, since it may happen that he does not keep an account at any bank. In that case, it would be most convenient for him to present the cheque personally at the bank and get the money; unless he had some friend at hand who kept an account, and would get the cheque cashed for him.

(3) On receiving a cheque, it is best to insert the words "by cheque" in any receipt which may be given. It is also the safest plan for the recipient to cross it specially with the name of his own bankers, and to mark it as "not negotiable," and to post it immediately to his bankers. It will, of course, require his endorsement. If the recipient does not keep an account at any bank, he should either present the cheque as soon as possible at the bank on which it was drawn, or arrange at once with some friend who keeps an account, for the friend to get the cheque cashed, and hand him the proceeds.

(4) If any one is asked to give change for a cheque by a stranger, the only safe course is to decline to do it; and if asked by a friend who deserves to be trusted, care should be taken to get the friend to endorse the cheque, and it should be transmitted for presentation as speedily as possible, in

manner above mentioned with respect to a cheque received in payment of a debt.

(5) If a cheque should be dishonoured, notice of dishonour should be given immediately to the drawer and all the endorsers; such notices being posted not later than the forenoon of the day following the dishonour.

NOTE.—The words “endorse” and “endorsement” are frequently written, and pronounced “indorse” and “indorsement.”

NOTE.—The case of *Young v. Grote*, 4 Bing. 253, 12 Moore, 284, which has been mentioned above on p. 22, was commented on in the House of Lords in the recent case of *Scholfeld v. Earl of Londesborough*, 1896, A. C. 514. The last-mentioned case itself calls for a good deal of discussion, but it would be beyond the scope of this book to enter into it. The practical rule that no one should draw a cheque so as to allow the amount to be capable of alteration without erasure remains unaffected.

CHAPTER IV.

PAYMENTS.

WHENEVER a payment of £2 or upwards is made, whether in cash or notes or by cheque, the party making the payment is entitled to require the party receiving the payment to give a written receipt for it, stamped with a penny stamp. Postage-stamps may be used for this purpose, and the stamp must, of course, be cancelled by writing upon it, so that it may be rendered incapable of being used again. The receipt may, however, be written on paper on which a stamp has been impressed at Somerset House. Collectors of rent ordinarily provide themselves with books of forms of receipts for rent, on stamped paper, and fill in and sign one of the forms for each instalment of rent which is paid to them. The trouble of writing a receipt for each payment is thus very much reduced. Other books of stamped forms of receipts can be purchased, adapted to special subjects of payment; and many societies, supported by numerous subscriptions, supply their treasurers with special books of forms of receipts for the subscriptions. A receipt for a voluntary subscription of £2 or upwards requires a penny stamp just as much as a receipt for a debt of like amount.

The penny stamp on a receipt is a tax which falls upon the recipient of the money. If the payer does not ask for a receipt, there is no need for the receiver to give one. If a payment is made by a cheque payable to the order of the other party, the payer may consider that the returned cheque will be sufficient evidence of the payment, and so excuse the

payee from giving a receipt. In general, however, it is wisest not to rely upon this evidence, but to ask for a receipt in all cases. If the recipient of a sum of £2 or upwards is asked for a receipt and refuses to give one, he becomes liable to a fine of £10. Also, any person giving an unstamped receipt for a sum of £2 or upwards, whether he is or is not asked for a receipt, is liable to a fine of £10. And a like penalty is incurred by any person who, on receiving £2 or upwards, gives two or more unstamped receipts, each for a sum less than £2 (Stamp Act, 1891, 54 & 55 Vict. c. 39, ss. 101-103).

There are certain exceptions to the rule that a receipt for £2 or upwards is liable to a stamp-duty of one penny. A banker is not liable to any such tax in respect of money paid into the bank by a customer to be placed to his account; and no stamp is required for receipts for taxes or for the pay of soldiers and sailors, or on the payment of any note of the Bank of England or of the Bank of Ireland (*Ibid.* Sched. tit. Receipt).

The liability to give a receipt for £2 or upwards appears, by the words of the Stamp Act, 1891, to attach in many cases where it is not customary to give a receipt at all, such as sales of goods for cash at auctions and markets, where the custom is to hand over the goods in exchange for the price, so that the purchaser is never a debtor to the seller at all. In such cases, the purchaser never thinks of asking for a receipt for his money.

With respect to payments of sums under £2, there does not appear to be any express law requiring any receipt to be given at all; but it is customary for a receipt to be given whenever an antecedent debt existed, which is extinguished by the payment. Thus, if A buys goods at a shop and does not pay for them at the time, and is entered in the books of the shop as a debtor for the price, and he afterwards pays for them, it is only reasonable that a bill should be made out and signed as paid, and given to him. Otherwise, he would have no evidence of the extinguishment of the debt. Also if A ordered goods at a shop and paid for them, but did not take

them away with him, he would ordinarily ask for a receipt to show that he was entitled to have the goods delivered to him. But if he paid for goods and took them away at the time, he would incur no debt and acquire no right, and ordinarily there would be no necessity for a receipt. Still, we know that many shops make out bills and give receipts for all goods sold for cash across the counter ; but the object of their doing so appears to be more for the sake of keeping a check upon their own shopmen and shop-girls than to keep things straight with their customers.

All receipts should be kept, and it is difficult to specify any period for which they should be kept, except the term of six years, after which time ordinary debts become barred by the Statutes of Limitation. Practically, the chance of a bill being sent in a second time becomes extinct in very much less time than six years. Most tradesmen have some customers who pay promptly, and others who pay at monthly, quarterly, yearly, or irregular intervals. If, then, goods ordered by a monthly customer are booked by mistake to a yearly customer, the mistake may not be found out by the tradesman until the account of the latter is sent in at the end of the year ; and on finding it out, he will naturally send in the account to the real debtor as an item omitted by mistake from the earlier account. If the latter has kept all his receipts, it will be possible to refer to them at once and see whether the item in question was included or not ; but, if he has not kept them, a dispute may arise and cause trouble and unpleasantness. A convenient way of keeping receipts is to do them up from time to time in bundles, passing a clip through the left-hand top corner of each and letting them lie flat without any folding. They can then be turned over rapidly at any time, and any receipt which is required can be found. It is a great mistake to take any one away from the rest and put it in a special place. It can be found much more readily in the regular place for all such documents.

A party paying money has not only a right to a receipt in

the cases above mentioned, but he has a right also to settle for what purpose the money shall be applicable; and the recipient is bound to frame the receipt accordingly, and incur the liability involved in accepting the money on the terms mentioned, or else to return the money. Thus, if A, being indebted to B, sends money to B directing him to lay it out in purchasing some articles for A, B is not entitled to keep the money and apply it in payment of the debt due to him (*Mildred v. Maspons*, 8 App. Cas. 874, July, 1883). He ought either to return it or accept it on the terms upon which it is sent. But if A, being indebted to B sent money to B, and expressed it to be in full satisfaction of his claim, and B claimed a larger amount, B might keep the money towards satisfaction of his claim, and sue A for the balance which he claimed.

Again, if A owes B two sums, say one for rent and the other for goods sold, and sends a sum of money to B in satisfaction of his claim for rent, B is not entitled to apply the money as the price of the goods, and then distrain for the rent. This is called the "law of appropriation of payments," and the debtor on making a payment is said to have the right of appropriating it. But if the debtor makes a payment on account generally, without appropriating it, then the creditor may appropriate it to extinguish such of his claims as he may think fit. And in the absence of any indication of intention on either side, the law would appropriate a general payment to satisfying interest first and capital afterwards, and to satisfying capital claims in order of date, paying first the debt which was first incurred.

Cases sometimes occur for the application of this rule in taking accounts between banker and customer, or between two traders who have many mutual dealings with each other. When the account is made out, the earliest credits are considered as extinguishing the earliest debts, as if a balance were struck immediately after each item upon each side. This rule, however, in the case of bankers, would only apply as between banker and customer. If a customer paid into a bank

money of his own and money which he held as executor of some other person, and drew cheques, some for his own purposes and some for purposes of the executorship, the law would regard the accounts as separable, and divide any balance at the bank accordingly (*In re Hallett's estate, Knatchbull v. Hallett*, 13 C. D. 696, Feb., 1880, C. A.).

When a cheque is sent by post in payment of a debt, it is sent at the sender's risk; and if the cheque is stolen from the post and paid by the sender's bankers, the debt is not extinguished. But if it reached the creditor, and was stolen afterwards and cashed, the loss would ordinarily fall upon the creditor. It will be seen, however, on turning to the chapter on cheques, that a cheque can be so drawn as to make it almost impossible for a stolen cheque to be cashed.

Before leaving the subject of payments, we ought to mention that a curious rule exists in English law, that if A has a clear claim against B for a definite sum, and offers to be satisfied with payment of a smaller sum, and B pays the smaller sum accordingly, and A gives him a receipt expressed to be in full discharge, A may nevertheless recover from B the balance of his claim. This is based upon the ground that B was doing no more than his duty in making the payment, and A was receiving no more than his due in receiving the payment, and there was therefore no consideration for A's release of the rest of his claim. If A released his claim against B by writing, to which he appended both his signature and his seal, then indeed B would be free, even if he paid A nothing at all, and the release was purely gratuitous. The law considers that a seal imparts consideration, and an actual release of a debt under seal, extinguishes the debt. But, if the release was not under seal, it is regarded as a promise only, and the general principle of the law is that a promise has no legal effect unless some consideration is given for it. The law does not measure the consideration and consider whether there was full value given for the promise, but it requires that there should be some benefit conferred on the promisor, or on some person at

his desire, or that something should be foregone by the promisee. Hence, in the case which we are considering, if some third party contributes to the payment, or even releases the debtor from some liability, there becomes a legal bargain, and the release would be good; and if there is any doubt about the amount due, an agreement fixing the amount is a good legal agreement. It is also considered by many lawyers that, the rule that a definite debt cannot be released by payment of a smaller amount, is not consistent with sound principle; and that really the maxim that "a bird in the hand is worth two in the bush" applies to such a case. Practically, the payment of a smaller sum is often more valuable than a right of action to recover a larger amount. The creditor is relieved from the expense and anxiety of bringing an action; and although the debtor may have a substantial spare sum of money in his pocket at the moment of the offer, it does not follow that by the time at which a judgment could be enforced against him, he would have sufficient property to enable the creditor to recover his whole claim and his costs. However, the law is settled that a mere payment of part of a debt expressed to be accepted in satisfaction of the whole claim, does not extinguish the rest of the claim, unless a release under seal is given (*Cumber v. Wane*, 1 Strange, 436.)

If a release under seal is given for a debt, it requires a stamp of 10s. (Stamp Act, 1891, Sched. tit. Release). A debt may, however, be satisfied by the acceptance of something other than money in discharge of it, even although it is clear that the articles accepted in discharge are of less value than the debt. The creditor would have legal capacity to agree to buy them at the price of the amount of the debt.

A receipt for a payment is called a "voucher," as regards the person making the payment, when he is accountable to some one else, as an executor or trustee is accountable. It vouches, or proves, the fact that he has made the payment.

CHAPTER V.

NOTES AND BILLS.

It will be seen that a bank-note consists of a simple promise by a banker to pay a specified sum on demand to the bearer of the note. Any other document containing a simple promise to pay a specified sum on demand, or on a certain day, or a certain number of days after demand, is called "a promissory note." A promissory note may contain a promise to pay interest at a specified rate, as well as a capital sum ; it may be made payable to bearer, or to any person or order. A promissory note is often given when a manufacturer supplies goods to a retailer on credit, and stipulates for payment at the end of a specified time, possibly three months or six months. The retailer then has the time named wherein to sell the goods and put by money enough to meet the note. Promissory notes are subject to a stamp-duty, varying with the amount of the note ; and every promissory note must either be written on stamped paper, or furnished with an adhesive stamp duly cancelled at the time of the signature of the note. When a promissory note is employed in matters of business, it is generally made payable at a fixed time. It is then said to be "current" until the time for payment arrives, and if it is not then paid it becomes overdue. The law relating to it very closely resembles the law relating to cheques.

Very frequently goods are transmitted from one merchant to another who resides at a distance, and cannot immediately sign a promissory note. Another form of document is then employed called "a bill of exchange," and, indeed, bills of

exchange are met with much more commonly than promissory notes. The general form of a bill of exchange, is that the party transmitting the goods writes an order directing the recipient of the goods to pay a certain sum of money, at a certain date, to a person named in the bill or his order. The terms "drawer," "drawee," and "payee" are employed as in the case of cheques. A bill of exchange, in fact, resembles a cheque, but it may be addressed by any person to any person, not only by a customer to his banker; and it need not be payable immediately, but it may be, and in practice it almost always is, payable at a future date. The law relating to bills of exchange very much resembles that relating to cheques. They are current until the time for payment arrives, and if not then paid they become overdue. They are generally employed between persons living at a distance from each other; and a bill is naturally forwarded as soon as possible to some banker, or other person residing near the drawee, and is presented to the drawee for acceptance: that is to say, the drawee is asked whether he does or does not undertake to pay the bill at maturity, that is to say, when it becomes due. If he undertakes to pay, he indicates his acceptance by writing his name across it, and he is thenceforward called the "acceptor." If he refuses to accept it, he is said to dishonour it; the same word "dishonour" being employed for the refusal to accept and the refusal to pay a bill. In either case, the drawee becomes liable to pay it.

A bill of exchange, like a promissory note, is liable to a stamp-duty, and if it is drawn in the United Kingdom, it must be written on stamped paper, or be stamped with an adhesive stamp before it is signed. A bill of exchange is often expressed to be payable at a certain number of days after sight, which means after it has been presented to the drawee for acceptance. The proper use of bills of exchange is for commercial dealings. In general, when a consignment of goods is sent by one merchant to another, a bill of exchange is drawn for the estimated value of the goods. The consignor may, perhaps,

get his bankers to discount the bill for him, that is to say, credit him with the amount of the bill, deducting a small percentage for discount corresponding to interest up to the date at which the bill is payable: the bankers would then send the bill to their agents near the residence of the drawee, and such agents would present the bill, first for acceptance and afterwards for payment, and account for the proceeds to the bankers who transmitted the bill to them. If goods are ordered and actually sold, the bill for them can be drawn, in the first instance, for the exact amount of the price, and when it is paid the transaction is closed. But when goods are transmitted to be sold on account of the consignor, the amount of their proceeds can only be estimated approximately, and the bill is then usually drawn a little under the mark. Then when the goods are sold and their actual proceeds are ascertained, a further bill is drawn for the balance. This is called a "marginal bill," being drawn, not against goods transmitted at the time, but to settle the account of goods previously transmitted and sold. When an original bill is drawn against a consignment of goods, which are transmitted by ship from one port to another, it is often accompanied by another document, namely the receipt for the goods which is given by the master of the ship: this is called a "bill of lading." A bill of lading specifies the goods and contains an undertaking to deliver them at the port of destination to the consignor's order, that is to say, to such person as the consignor names by writing on the bill of lading.

Bills of exchange are constantly being drawn by merchants, in all countries, on other merchants residing in other countries. The cash required for paying the bills is not actually transmitted in each case, but arrangements are made for exchanging the bills, just as cheques are exchanged at the London clearing-house, and the balances only are ultimately sent in cash from one country to another when it becomes clear that the balance of trade is against one of the countries, and that gold must be sent out of it to the other.

As bills of exchange thus play an important part in the circulation of money, it is necessary that the title to them should be certain. As long, therefore, as they are current, that is to say, until the proper date for payment, they are negotiable, which means that a person taking one for value in the ordinary course of business gets a good title to it. The fact that bills are thus negotiable leads to their employment, in some cases, by swindlers. If A sells B some goods on credit for £100, and it turns out that the goods are of bad quality, B may resist an action by A for the £100; and A cannot make over his claim against B to any third party, C, so as to give C a better right against B than A had. But if A has induced B to accept a bill for the £100 payable in three months, and endorses that bill to C within the three months, C, as a purchaser of the bill for value, has a valid claim against B for the £100, even supposing the goods supplied by A to be utterly valueless. B may have a claim against A for the loss thus inflicted upon him, but a right of action against a rogue may often produce less than the costs of an action against him.

Again, the negotiability of bills often leads to their employment for the purpose of borrowing money. D draws a bill upon E, say for £500, payable at the expiration of six months, and E accepts it. The bill may be drawn in the form "Pay —, or order," leaving a blank for the name of the payee. This may lawfully be done; it is called an "acceptance in blank," and it gives authority to any holder of the bill to fill up the blank and insert his own name, or the name of any other person as payee. The arrangement between D and E then is, that D shall try to get somebody to discount this bill for him, and doubtless E stipulates that he is to receive something for undertaking the liability. The whole transaction is, in fact, merely a scheme for borrowing money. It is called an "accommodation bill," being accepted by E for the accommodation of D. A money-lender may perhaps be found who will discount it, deducting, not merely the commercial discount, but a very large proportion of the amount of the bill. If D and

He is not in sufficiently good credit to get the bill discounted on reasonable terms, they may try to get other friends to help them by writing their names on the back of the bill, so as to become liable as endorsers. This is called "backing the bill." An unfortunate endorser may be induced to back a bill by all kinds of false statements and false promises, but he will nevertheless have no defence against a holder who has taken the bill for value while it was current. The law is the same with respect to a promissory note.

A case once occurred in which a swindler asked a friend to witness some documents, saying that he covered the writing with blotting-paper because the contents were of a private nature. The friend signed, and it turned out that he had written his name upon two promissory notes. In the course of time he was sued on them, and the facts were found to be as we have here mentioned (*Lewis v. Clay*, 46 W. R. 319). The judge, before whom the case came in the first instance, held that he was not liable upon the notes. Notice of appeal was given, but the notes were paid by other parties, and the appeal was therefore unnecessary. It may be doubted whether the decision would have been sustained on appeal. Anyhow, no one should ever sign his name in such a way. If a man is asked to sign some hidden matter as a witness, and he wishes to oblige the asker, he can at least write above his name the word "witness," or more fully "witness to the signature of J. S."

Before leaving the subject of bills and notes, it may be well to explain what is meant by a notary, or a notary public, as he is sometimes called. If a bill is dishonoured, either by non-acceptance or non-payment, the drawer becomes liable to pay it, and all endorsers are also liable as in the case of cheques. These may reside in other countries, and it may consequently be difficult to bring witnesses in these countries to prove the presentation and dishonour of the bill, and the posting of the proper notices of dishonour. The assistance of a notary is here material. A notary is an official, appointed in each country

by a recognized authority, and furnished with a notarial seal. A document sealed with a notarial seal, and certifying as to the presentation and dishonour of a bill, is accepted as evidence in the Courts of all civilized countries. This is a matter of international courtesy, and seems to be derived from the fact that most civilized countries had a common church a few centuries ago; for the notaries were originally ecclesiastical officers, and the appointment of notaries in England and Wales rests, to this day, with an official acting under the Archbishop of Canterbury. The persons appointed, however, are almost always solicitors. If a bill is dishonoured, therefore, the practice is to take it to a notary, who presents it again and certifies the dishonour. His certificate is evidence in any country; and, furthermore, if it is necessary to prove the dishonour of the bill in the English Courts, a notary is the best sort of witness to call, as he is familiar with all things connected with the dishonour of bills. There are other matters also in which notaries are qualified to act (*Cooke v. Wilby*, 25 C. D. 769, Jan. 1884).

It has been mentioned above, that a promissory note requires a stamp; but no stamp is required for a mere admission of indebtedness. Such an admission is often made in the form called an I. O. U., as—

“Mr. John Smith,
I. O. U. £50,
THOMAS BROWN.”

Here the letters I. O. U. are understood to mean “I owe you.” Such a document is not negotiable like a promissory note. It is not itself a contract, it is merely an admission of a liability arising in some other way.

Cheques, promissory notes, and bills of exchange are negotiable while they are current; and bank-notes are negotiable always. Bills of lading are also negotiable, and so are some other commercial documents.

CHAPTER VI.

SAVINGS BANKS.

THE principal savings banks now existing, are the Post Office Savings Banks established under the authority of an Act of Parliament passed in the year 1861 (24 Vict. c. 14). There are, however, other savings banks established under the authority of earlier Acts, but these are of little importance compared with the Post Office Savings Bank.

The Post Office Savings Bank Act, 1861, authorized the Postmaster-General, with the consent of the Commissioners of the Treasury, to establish savings banks at post-offices, and make rules for them.

Under this authority, savings banks have been established at very many post-offices in the United Kingdom, and rules have been laid down regulating their practice.

The first point which deserves consideration, is the making of a deposit. Any person, who is not a depositor in any other savings bank, may become a depositor in the Post Office Savings Bank: he has only to go to one of the post offices and say that he wishes to make a deposit. The man in charge of the office will then require him to sign a declaration that he is not a depositor in any other savings bank; and, if he signs such a declaration untruly, his deposit will be liable to be forfeited. The reason for this rule is, that neither the Post Office Savings Banks, nor any other savings bank, can be sure of paying their expenses and the interest promised to their depositors. Any deficit in their accounts is made up out of the public purse, unless, in the case of private savings banks,

private liberality supplies the need. Consequently, savings banks are a sort of charity, having the object of encouraging providence among the poor; and a limit is very properly placed upon the benefit which any one person may derive from them. The rules of all savings banks, therefore, provide that no person shall be a depositor in more than one savings bank, and each savings bank limits the amount which any one person may deposit in it.

In the case of the Post Office Savings Bank, the amount of the first deposit may be one shilling, or any number of shillings, so that the limit hereinafter mentioned be not exceeded, and the same rule applies to every subsequent deposit. No sum less than a shilling, and no odd pence, will ever be received.

A depositor, on making his first deposit, will be required to give his name and address, and probably also his occupation. At least, the form to be filled up contains a line for the occupation, and the managers of some post-offices insist on its being filled up, but others leave it optional. Where it is left optional, the expediency may be considered of filling it up or not. If it is filled up, it may make it more difficult for any other person to personate the depositor and get out the money; but, on the other hand, it may cause the depositor himself some trouble, for after a few years he may forget how he described himself, and he may thus experience a difficulty in getting back the money himself. Purchasers of consols often experience a difficulty on this account when they sell them again after a considerable interval.

Every depositor in the Post Office Savings Bank is required to sign his name in full. There are other occasions also on which this is required; but, except in cases where a full signature is directed, a man's ordinary signature, *e.g.* his surname preceded by the initials of his prænames, is sufficient for all purposes.

When the intending depositor has signed the prescribed declaration, the master of the office will take it and keep it, and give him in return a deposit-book with the amount of the

deposit entered in it. In this book the depositor will find printed the principal rules of the Post Office Savings Bank. These rules give a complete account of the whole mode of proceeding, and the present chapter is merely a repetition of the chief points in them.

The depositor, after having opened his account, may make further deposits, either at the same post office or at any other office where a branch of the Post Office Savings Bank has been established. He need only go to some such office with his deposit-book and pay in the money which he wishes to deposit. The postmaster will receive his money and make the requisite entry in the deposit-book. The signature has to be attested by the signature or initials of the postmaster, or his servant, who receives the money, and with the stamp of the office; and the depositor should of course see that the entry is made correctly.

It is the duty of the district postmasters to transmit all sums received by them, with the names of the depositors, to the central office, where all the depositors' accounts are kept; and the depositor will receive by post a receipt from the central office for each sum deposited. This receipt ought to reach the depositor within four days, if the deposit is made in England or Wales, and within six days if it is made in Scotland or Ireland. If this receipt does not arrive, or if it is incorrect or shows any erasure, the depositor should apply by letter to the controller of the savings bank department. And a letter written by a depositor to the savings bank department with reference to his deposits may be sent unstamped.

These receipts should be kept, for they are evidence that the money has been received at the central office. The entries in the deposit-book only show that the district postmaster has received the money. A depositor should, therefore, write to the central office if he does not get his receipt by post. Let us suppose that a district postmaster embezzles the money which he receives instead of sending it to the central office. The officials at the central office may know nothing about it, since

they cannot tell what money has been deposited at the district offices. The depositor, however, will not receive his receipt from the central office. Then, if he writes and mentions his deposit, inquiries will be made at once; but if he omits to write, the central office may not become aware that any irregularity has happened before the district postmaster has had time to escape. If, under these circumstances, the depositor wrote within ten days, the central office would be bound to make good his deposit; but if he omitted to write within that interval, the loss would fall upon him. The words of the Act of Parliament (24 Vict. c. 14, s. 2) seem to imply that a depositor should keep on writing every ten days until he gets his receipt.

Just as deposits may be made at any Post Office Savings Bank, so withdrawals may be made at any. But there is a difference: in the case of a deposit, the depositor may go at any time with his book and deposit his money, but greater precaution is taken with respect to a withdrawal. In order to withdraw the whole, or any part of his money, the depositor must apply at some Post Office Savings Bank for a withdrawal order, and fill it in and send it by post to the controller of the department at the General Post Office. The order will not want directing, as it bears a printed direction on it. In filling in the order, the depositor will have to state his name, the number of his book and the office at which he obtained it, and the amount which he wishes to withdraw, and the office at which he wishes to receive it. The number of the book and the office of issue will be found printed in the book. If the depositor wishes to draw out all his money, he should add on the withdrawal order the words "with interest to close account."

In return for the withdrawal order, the applicant will receive by post, probably on the following day, a warrant for the payment of the sum required at the office named. He will then be able to go to that office with his book and warrant for payment, and hand them to the postmaster there. The latter will keep the warrant, make an entry of the withdrawal in the

book, and hand the money to the applicant. If the depositor draws out the whole sum standing to his credit, he will have to give up his book, but if he only draws out a part of it, the book will be returned to him.

Interest is allowed to depositors at the rate of one half-penny for each complete pound for each complete calendar month, the interest ceasing on the issue of a warrant for repayment. A halfpenny per pound per month is sixpence per pound per year, or at the rate of $2\frac{1}{2}$ per cent. per annum. The interest due to each depositor is reckoned at the end of every year, and added to his principal in the books at the central office; and each depositor is required to send his deposit-book once a year to the central office on the anniversary of his first deposit, to have the interest inserted in it.

It has already been mentioned that rules have been made restricting the amount which any one person may deposit in a savings bank. In the case of the Post Office Savings Banks the rules are as follows:—

(1) No person may deposit more than £50 in any one year, but sums withdrawn may also be replaced.

(2) Depositors can invest money in the funds through the post-office, and the amount of any deposits so invested may be replaced also.

(3) No person may have more than £200 on deposit altogether. When that limit is reached no further deposit will be accepted.

Returns are made annually to Parliament of the position of the Post Office Savings Bank, but these returns give only the general result of the deposits in the banks. Perfect secrecy is preserved with respect to the names of the individual depositors and the amounts standing to their credit.

CHAPTER VII.

SALES OF GOODS.

A SALE of goods may take place in various forms. The first and simplest, is when the goods are delivered at the time of sale to the purchaser, and the money for them is paid at the time.

The second is when the goods are delivered at once to the purchaser, but the money is not paid for them but credit is given.

The third is when the purchase-money is paid at once, but the goods are not delivered.

And the fourth when there is neither delivery of the goods nor payment of the money, but merely a promise on the one part to deliver the goods, and on the other to pay for them.

Let us consider each of these cases in turn.

In the first case, when the goods are delivered and the price is paid at once, there is little room for dispute. Nothing is required for such a sale except the consent of the parties; for instance, the law does not require any written memorandum to be made of any such sale, or the sale to be made in the presence of any witness. So that neither party can afterwards endeavour to recover the goods, or the price of them, on the ground that the sale was not conducted with proper formalities. It is not necessary that any bill or invoice of the goods sold should be made out, or that any receipt should be given to the purchaser. If the sum paid amounts to £2 or upwards, the payer may demand a receipt, and it is then the duty of the person to whom the money is paid to give a receipt with a penny receipt-

stamp on it; and if he refuses to give a receipt, or gives one without a stamp on it, he is liable to a penalty of £10 (Stamp Act, 1891, s. 103). If the sum, however, is less than £2 the receiver is not bound to give any receipt for it, and if he gives a receipt it need not be stamped.

A sale in the second of the above-mentioned forms, namely, that in which the goods are delivered but the purchase-money remains unpaid, may likewise be made by the mere consent of the parties without any formality. It requires no witness or memorandum in writing. The seller may, of course, refuse to part with his goods on credit without an admission of the debt on the part of the buyer, but it is not necessary for him to require any. A written memorandum, or a witness to the transaction, would assist him if he had eventually to bring an action to recover the price of the goods. But he might equally recover it without such evidence. It would be sufficient for him to state in the witness-box that he had sold the goods on credit, and the jury, or judge (if it were tried before a judge in a County Court), would, of course, believe a respectable tradesman. It would, at the same time, be prudent for a tradesman selling goods on credit to make a note of each such sale in his books on the day on which he gave the credit. He might be asked whether he had done this, and be called upon to produce his books, and his omission to have made an entry or to have kept any books, would tell against him.

The effect, then, of such a sale as we are considering, is that the goods become the property of the purchaser, and he incurs a debt to the seller for the amount of their price. The seller cannot afterwards reclaim the goods, he can only recover his debt; and the purchaser cannot afterwards escape payment of the debt by offering to return the goods. He is bound to pay the price agreed upon. Unless some agreement is made with respect to the time to be allowed for payment, the seller may demand payment at any time; and, if payment is not made, he may proceed to enforce it by legal proceedings.

If the seller takes a promissory note or bill of exchange for

the price of the goods, he cannot bring any action until the date arrives for payment of the bill or note. If he negotiates the bill or note, and it is dishonoured by the purchaser at maturity, he becomes liable to pay it; and he cannot commence any action against the purchaser until he has done so, and become himself the holder of the bill or note (*Davis v. Reilly*, 1898, 1 Q. B. 1).

The third form of sale above-mentioned was that in which the price was paid but the goods were not delivered at the time. Such a transaction would only take place under exceptional circumstances, and would probably be accompanied by an agreement on the part of the seller to deliver the goods to the purchaser at a certain time and place.

The rights of the parties under such a transaction would be governed by the same principles as their rights under the fourth form of sale, which comes in next for discussion, and may be ascertained from the account about to be given.

The fourth form is that in which neither the goods are delivered, nor the price paid.

In considering this form of sale, let us first give our attention to the question at whose risk do the goods stand while they remain with the seller?

The answer will be that, in all cases, the seller is bound to use due intelligence in the custody of the goods, and if any loss occurs through neglect on his part, the loss will fall on him. That is to say, if the goods have been lost through his negligence, he will be unable to recover the price of them from the purchaser, and will be liable to pay him damages to be assessed in a manner to be described presently. But with respect to loss caused by some act which the seller could not by using diligence, prevent, as by fire for instance, a distinction arises. For if the goods have been appropriated for the purchaser with his consent, the loss will fall on him, but if they have not been so appropriated, the loss will fall on the seller (*Gilmour v. Supple*, 11 Moore, P. C. C. 551, Sale of Goods Act, 1893, s. 18, rule 5, and §. 20). In every ordinary case, in

which a specific thing existing at the time is sold, the goods will be considered as appropriated. Suppose, for instance, a clock in a watchmaker's shop is sold, and the purchaser is to come the next day and take it away. The clock is then appropriated to the purchaser from the time the bargain is struck, whether the money is paid at once, or is to be paid the next day (Sale of Goods Act, 1893, s. 18, rule 1). Suppose, however, the sale is of 20 yards of cloth, of which a sample is shown to the purchaser, and he goes away without seeing the 20 yards measured off; in that case the goods are not appropriated for him (Ibid. rule 3). These two transactions would be properly described by different words. When the goods are appropriated, it is an actual sale, the goods become the purchaser's from that moment, and he incurs a debt for them; when the goods are not appropriated for the purchaser, the transaction is a contract to sell at a future time, and the goods remain the seller's until something further is done to make them the purchaser's, either a delivery of them to him, or an appropriation of them for him with his consent. On a sale, in legal language, the property is said to "pass" at once; in a contract to sell, the property does not pass (*Dixon v. Yates*, 5 B. & Ad. 340, 1833, per Parke, J.).

Next with respect to the liability of the purchaser to pay the price, in no case will he be liable to pay for the goods before they are delivered to him unless a special agreement to that effect is made, or they are lost while standing at his risk. And such an agreement is in practice never made except in peculiar circumstances, and then it in general only relates to a part of the money. Thus, in a contract for building a boat, it is often agreed that the builder shall be paid by instalments: a certain sum when the keel is laid, a further sum when the deck is put in, and so on.

In the same way, the seller cannot be compelled to deliver the goods without receiving payment for them, unless he expressly agrees to sell them on credit. This right of the seller is called, in legal language, "the vendor's lien:" "vendor"

being another word for seller, and "lien" being the name for the right to retain possession of something until some charge is paid, whenever such right exists. This vendor's lien exists equally in the case of a sale and a contract to sell. And unless it is expressly given up, or, in legal language, "waived," a sale is presumed to be made subject to it (Sales of Goods Act, 1893, s. 39). Of course, an agreement to sell on credit constitutes a waiver of it. The right of the seller to be paid for his goods is further protected by another right which he has. For after he has parted with possession of the goods without being paid for them, if they have not reached the actual possession of the purchaser, the seller may reclaim them if the purchaser has become bankrupt, or declared himself insolvent by stopping payment (Sale of Goods Act, 1893, s. 44). This right of the seller to stop the goods in the transit is called, in legal language, a "stoppage in transitu." Of course, if the seller's goods are being conveyed to the purchaser by a servant of the seller, the seller may at any time recall his orders before they have been executed, and have the goods brought back, whether the purchaser has become bankrupt or not. But the right of stoppage in transitu may be exercised, although the goods have been delivered to some person who is not the seller's servant for conveyance to the purchaser, as for instance, a carrier or a railway company.

Thirdly, let us consider the remedy of each party in case the other refuses to perform his part. In this we must attend to the distinction between a sale and a contract to sell, which has been already pointed out. We will take the latter first, and in each case, consider first the seller's remedies and afterwards the purchaser's.

I.—CONTRACT TO SELL.

(a) *Vendor's Remedy.*

If a contract to sell has been made, and the purchaser refuses to take the goods and to pay for them, the seller may

bring an action against him, and recover the loss which he thereby sustains. The amount of this loss will be assessed at the excess of the price agreed to be given by the purchaser over the price at which the goods would sell in the market at the time appointed for completion of the contract. With the view of ascertaining this, the seller may actually dispose of the goods within a reasonable time after the date fixed for completion of the contract, and he will then be entitled to recover from the purchaser the excess of the price agreed to be given by him over the price for which the goods have actually sold; and he would also be entitled to recover from the purchaser the costs of reselling the goods, and any other costs incurred by him in consequence of the purchaser's default (Sale of Goods Act, 1893, s. 50).

(b) *Purchaser's Remedies.*

In like manner, the purchaser's remedy for breach by the vendor of a contract to sell, is to bring an action against him to recover the amount of damage he has sustained. There is a difference, however, in assessing damages against a vendor and against a purchaser, arising from the fact that any description of goods may at any time be sold, but it is not the fact that any kind of goods can at any time be bought. Many goods, such as special kinds of machinery, can only be obtained after allowing time for their manufacture.

If, indeed, the goods are such as can readily be bought in the market, then the analogy between the purchaser's remedy and the seller's is complete. The amount of damages to be given to the purchaser will be the excess of the amount for which he might have bought the goods at the time and place at which they ought to have been delivered, over the price at which the seller agreed to supply them; and to ascertain this, the purchaser might actually purchase such goods within a reasonable time after the date fixed for completion of the contract; and he would also be entitled to recover the costs incurred by him in consequence of the vendor's default (Sale

of Goods Act, 1893, s. 51). This measure of damages would not be affected by the fact that the purchaser had made a contract to resell the goods at a price exceeding the market price. He would not be able to recover such extra profit from the seller, for it would be open to him to perform such second contract by buying goods in the market at the market price.

If, however, the goods were not readily procurable in the market, the case would be different. It would not then be possible for the purchaser to get the goods he required at a moment's notice; and, besides the difference in the price he would have to pay for them, he would sustain damage by reason of the delay which would occur. In such a case, therefore, further damages would be given in respect of such delay. The question here often arises whether the purchaser is entitled to recover the full amount of loss he may actually incur owing to the delay, or whether he is only entitled to recover such an amount as might naturally be expected to be incurred. And it is held that the latter is the rule, but that if the purchaser has given the seller notice that he requires the goods for some special purpose, he will then be able to recover the full loss he may sustain from being unable to carry out the purpose mentioned.

It will be well to illustrate these principles with examples. In one case, an agreement was made for sale of a hull on the Thames. The purchaser intended to use it as a station for cranes to help in unloading colliers, but the ordinary use to which such a hull would be put would have been that of a coal-store, for which purpose it could have been let at a moderate rent. The hull was not delivered in time, and the purchaser sustained thereby a loss much exceeding the rent of the hull as a coal-store, and sought to recover his whole loss; but as he had not informed the seller of the purpose for which he had intended to use the hull, it was held that he could not recover the loss he had actually sustained, but only the amount he would have sustained if he had wished to use it as a coal-store

(*Cory v. Thames Ironworks Company*, L. R. 3 Q. B. 181, Jan. 1868).

In another case in which the plaintiff, who was a large farmer, and was known by the defendant to be accustomed to thresh out his wheat in the field and send it off to market, gave an order to the defendant for a threshing-machine, which was to be delivered on August 11, at which time the wheat might reasonably be expected to be ripe; and the threshing-machine was not ready, but was promised from time to time, and was not delivered before the middle of September; and it became necessary to stack the wheat out in the field, where it was damaged by a thunderstorm, and much greater loss was sustained than the amount that could have been made by letting out the machine. It was held that the plaintiff was entitled to recover the whole amount of damage he had sustained, as the injury was such as might naturally be expected to result from the breach of contract, and ought to have been contemplated by the defendant as a probable consequence of failure on his part to send the machine at the time appointed (*Smeed v. Foord*, 1 Ell. & Ell. 602; 28 L. J. Q. B. 178; "Addison on Contracts," 6th Ed. 1065; see also *Hydraulic Engineering Company v. McHattie & Co.* 4 Q. B. D. 670, Dec. 1878).

It would also seem that if, in a case in which the goods were not readily procurable, the purchaser had agreed to resell at a profit, and lost his bargain through default on the vendor's part in delivering the goods, he would be able to recover as damages the whole profit he would have made on the resale. The goods not being readily procurable, the price at which he agreed to resell might fairly be called their market price (compare *France v. Gaudet*, L. R. 6 Q. B. 199, with "Addison on Contracts," 6th Ed. 1074).

II.—SALE.

We now pass to consider the case of the transaction being not a mere contract to sell, but an actual sale of goods, the

subject of it being appropriated to the purchaser, and the property in it being considered, in the eye of the law, to have passed to him.

(a) *Vendor's Remedies.*

In this case, the vendor may bring an action to recover the whole price of the goods, and not merely the excess of it over the market price. But then, whereas in the former case the goods belonged to him and he might sell them, in this case the goods belong to the purchaser, and the vendor is bound to give them up on payment of the price. He may not therefore sell them, but has only a lien on them for the unpaid purchase-money, and may retain them until the price is paid. The vendor's action, in such a case, is called an "action for goods bargained and sold" (Sale of Goods Act, 1893, s. 49).

(b) *Purchaser's Remedies.*

The purchaser's remedies in case of non-delivery of the goods on a sale, are likewise different to those arising under a mere contract to sell. For under a sale the goods, in the eye of the law, become the purchaser's, and in strict right he is entitled to recover them in specie, and not merely damages in place of them. This he may do by an action against the person detaining the goods, which would ordinarily be described as an action of "detinue," that being the name of such an action at law prior to the amalgamation of law and equity in the year 1875 (Sale of Goods Act, 1893, s. 52). It would not, however, be advisable for him to claim a specific recovery of the goods, unless they were of such special value that money would not form an adequate substitute for them, such as a picture by a celebrated artist, or a sculpture, or a relic of antiquity. In other cases the Courts would say that, though his property was being unjustly held from him, still, as he could obtain for money other property of exactly the same description, complete justice would be done by giving him the full money value of his property and any loss sustained

through its detention, and letting the wrong-doer keep the property. It is evident that such a sentence would be more easily carried out than a decree ordering restitution of the specific property. The defendant might hide the specific property, or get some of his friends to take it; but under an order for payment of money, the debtor's goods can be taken and sold and the money thereby raised. To this, it may be added, that in all cases of ordinary sales of goods, one lot of goods is so exactly like another that it would be impossible for the purchaser to say which were the identical goods he had bought, and it would, in fact, be impossible to enforce specific restoration of the goods. The action which a purchaser would bring to recover the value of the goods sold to him but not delivered, would be called an action of "trover." In it the purchaser may, in every case, recover the full damages caused to him by detention of the goods, whether the seller had or had not notice of the purpose for which he intended to use them (*France v. Gaudet*, L. R. 6 Q. B. 199; Sale of Goods Act, 1893, s. 54).

In recovering the value of the goods from the seller, the purchaser would, of course, at the same time have to account for the price to be paid by him for them, if it had not been already paid, and the value of the goods would be determined by their market price, in the same way as under a contract to sell. In the case of works of art, or other goods of peculiar value, of which specific recovery will be given, the purchaser may compel the vendor to give them up to him on payment of the price; and, as the goods become the purchaser's by the sale, he may also reclaim them from other persons to whose hands they may come, leaving such other persons to have recourse to the defaulting vendor.

But his right to recover them from third persons is restricted by another principle that, if the other person in whose hands they are found, bought them in open market, or, as our law calls it, "market overt," such person has got a good title to them and cannot be attacked (Sale of Goods Act, 1893,

s. 22). As to what is, and what is not open market, it appears that every ordinary market comes within the word, and shops within the city of London are also considered to be market overt for all classes of articles usually sold in them (see *Hargreave v. Spink*, 1892, 1 Q. B. 25). It appears, however, that shops elsewhere are not so considered. Fortunately, the case of a man who has fairly bought goods having his title impeached rarely occurs. If it were at all frequent, a cry would no doubt be raised to give purchasers from all shops of good standing the same privilege, in this respect, as purchasers from shops in the city of London.

There is still one point to be mentioned with respect to this fourth form of sale, in which the purchase-money is left unpaid and the goods undelivered. In the case of the other three forms we saw that no formality was required for them, but only the assent of the two parties. The case is the same for sales and contracts to sell of the fourth form where the value of the goods is under £10, but if the value of the goods is over £10 the case is different. It is then necessary either that the buyer shall accept part of the goods sold and actually receive the same, or that he shall give something in earnest to bind the contract, or in part payment, or that some note or memorandum in writing of the contract be made and signed by the parties or their agents (Sale of Goods Act, 1893, s. 4; replacing 29 Car. II. c. 3, s. 17, commonly called the Statute of Frauds). Unless one or other of these requirements be complied with, the transaction is not legally binding, and no action can be brought by either party to enforce it.

The next point to which we propose to pay attention, is the liability of the seller in respect of the quality of the article sold.

The first question to be answered on this head is, "Did the purchaser inspect the article himself and trust his own judgment, or did he contract for the purchase of articles of a certain description, trusting to the seller to furnish them properly?" In the latter case, it is the duty of the seller to

furnish articles answering the description (Sale of Goods Act, 1893, s. 13), and if he furnish inferior articles, the purchaser may refuse to accept them, and whether the purchaser accept or not, the seller will be liable to make good to the purchaser any loss incurred by him in consequence of the default. Thus, when there was a contract for the sale of "seventy-five barrels of best pork branded Scott & Co.," and the seller sent an inferior sort of pork, and the purchaser sustained loss thereby, the seller was held bound to make it good (*Powell v. Horton*, 2 Bing. N. C. 668).

And, in like manner, if the contract be to furnish an article which the seller is told is to be used for a particular purpose, the seller will be bound to furnish one fit for that purpose (Sale of Goods Act, 1893, s. 14). Thus, where the plaintiff sent to the shop of the defendant, who was a rope-dealer, for a crane-rope, and the defendant's foreman went to the plaintiff's premises and took the necessary measurement, saw the crane, and was told that the rope was wanted for the purpose of raising pipes of wine, and the rope was brought and fixed, but it broke, and a cask of wine fell into the street and was lost; it was held that the defendant, by accepting the employment under the circumstances, had impliedly undertaken to furnish a rope reasonably fit for the purpose for which it was ordered, and was liable for the damage occasioned by its breaking, although he was not in fact the maker or manufacturer of it, he having employed a rope-maker to execute the order; and the latter having, in his turn, employed a third manufacturer of ropes for the purpose (*Brown v. Edgington*, 2 Sc. N. R. 496; and see *Bigge v. Parkinson*, 7 H. & N. 955; 31 L. J. Ex. 301).

If, however, the purchaser has an opportunity of inspecting the goods, he must look out for himself, and will not be able to make any claim on the seller if they turn out to be something different from what he supposed them to be. The law acts in this on the maxim expressed by the two Latin words, *caveat emptor*, the English of which is, "let the buyer look

out." For, when the purchaser inspects the goods, there is no implied warranty on the part of the seller as to their character, quality, or condition, except as to defects not discoverable on examination (Sale of Goods Act, 1893, s. 15), and except as hereinafter mentioned.

Thus, where the plaintiff offered to sell the defendant oats, and exhibited a sample; and the defendant took the sample, and on the following day wrote to say he would take the oats at the price of 34s. per quarter. And the defendant afterwards sent back the oats on the ground that they were new, and he thought he was buying old oats; nothing, however, was said when the sample was shown, as to their being old, but the price was very high for new oats. And it was held that a mistake on the part of the purchaser under such circumstances did not entitle him to send back the oats and refuse to pay for them (*Smith v. Hughes*, L. R. 6 Q. B. 597).

There are, however, a number of exceptions to the rule that the seller is under no liability in respect of the quality of the goods sold when the purchaser has an opportunity of inspecting them, which exceptions we will now proceed to discuss.

First, in the case of a sale of provisions by a dealer in provisions, the seller is liable if he sells food knowing it to be bad. And the case is the same if the seller does not know the food to be bad if its defect is such that he would have known it if he had possessed proper skill in his trade, and had examined it properly. As to whether a provision dealer is liable for selling bad food when he does not know it to be bad, and the defect is such that it could not be ascertained by a person of proper skill who examined it properly, is more difficult to say. It has been generally laid down that he is liable (*Burnby v. Bollett*, 16 M. & W. 644, 17 Law J. Ex. 190); and in particular, it has been stated as long ago as the reign of Henry VI., that if a man goes to a tavern to eat, and the taverner puts before him meat and drink corrupted, whereby he is made sick, an action lies against him (Year Book of Henry VI., 53, 1 Rolle Abr. 90, Pl. 2). But in a modern case,

in which a meat salesman in London sold to a butcher a carcase, which was to all appearance sound, but which proved on cooking to be bad, it was held that the salesman was not liable to make good the loss to the butcher (*Emerton v. Matthews*, 31 Law J. Ex. 139; 7 H. & M. 586). It is clear, moreover, that a person who is not a dealer in provisions is not liable for selling them with a defect of which he is not cognisant. Thus, when a farmer bought a pig's carcase of a butcher and left it for a few hours at the butcher's shop, and then sold it again at a small profit to another farmer, who took it away from the shop, and it was found to be measly, it was held that the second farmer had no right of action against the first, but it was suggested that he might take proceedings against the butcher (*Burnby v. Bollett*, 17 L. J. Ex. 198, 16 M. & W. 644).

While treating of this subject, we ought to observe that the selling of bad provisions is regarded by the law as not merely an injury to the purchaser, but as a public offence which ought to be prevented and punished. Hence, bad meat exposed for sale may be seized and destroyed by the inspectors, and the sellers of it are liable to fine and imprisonment.

In ancient times, offenders in this respect were put in the pillory; and, as a matter of historic interest, it may be added that procuring flesh from Jews and selling it to Christians was regarded as an offence of exactly the same nature as selling diseased flesh. This, of course, is altered now, nor would any reasonable Christian object to eating flesh which Jews had killed.

Another exception to the rule that a seller is not responsible for the quality of an article sold, exists in the case of trade-marks and descriptive words upon goods. The law on this subject is regulated by an Act of Parliament, called "the Merchandise Marks Act, 1887" (50 & 51 Vict. c. 28), which provides (s. 17) that on a sale, or contract for the sale of any goods to which a trade-mark or trade description has been applied, the vendor shall be deemed to warrant that the

trade-mark is genuine, and that the trade description is not false, unless the contrary shall be expressed in writing delivered to and accepted by the purchaser. In this Act (s. 3), the expression "trade description" includes any statement inscribed on goods as to their number, quantity, measure, gauge, weight, material, or place of manufacture. The Act also makes it criminal for any person to forge any trade-mark or apply any false description to goods, or to sell or expose for sale any such goods, unless in the latter case the seller has acted innocently. Very heavy penalties in the way of fine and imprisonment may be inflicted for these offences, and the articles bearing the forged mark or false description becomes forfeited to the Crown.

Persons selling articles bearing forged trade-marks are also liable to be harassed by proceedings on the part of the owners of the trade-marks which are imitated, the result of which may be that they will be forbidden to sell such articles for the future, the articles bearing forged marks in their possession will be destroyed (25 & 26 Vict. c. 88, s. 21), and they will have to pay damages to the owner of the trade-mark for the loss caused to him by sales they have already made. We may observe that an order of a Court forbidding an act to be done is called an injunction. If an injunction is disobeyed, the disobedient party commits a contempt of Court, and may be summarily sent to prison by the Judge who pronounced the order.

A third exception to the rule that the seller is not responsible for the quality of an article sold when the purchaser has an opportunity of inspecting it, exists in the case in which there is some secret flaw in the article of which the seller is aware. In such a case, he is bound to tell the purchaser of the defect. If he does not do so, the purchaser is evidently liable to be deceived by the appearance of the article, and to believe it to be sound when it is not so. The seller will, therefore, be really deceiving the purchaser by omitting to tell him, and for such deceitfulness the law will

hold him responsible. In legal language, a defect which would not ordinarily be detected by inspection is called a "latent defect," while one which would be detected is called a "patent defect." The law on this subject was stated by Baron Bramwell in the following words (*Horsfall v. Thomas*, 1 H. & C. 90; 31 L. J. Ex. 322):—

"If indeed there be a defect known to the manufacturer, which cannot be discovered on inspection, he is bound to point it out; but if there be a defect which is patent, and of which the purchaser is as capable of judging as the manufacturer, he is not bound to call the attention of the purchaser to it" (1 H. & C. p. 100, date 1862).

A fourth exception to the rule, which we are considering, occurs when the seller makes a statement to the purchaser about the quality of the article sold, which he knows to be false. In such a case, the purchaser may not only recover any damages he may sustain owing to the deficiency in quality of the article, but he may return the article itself and recover the money paid for it. For his consent to the original sale was obtained by fraud, and therefore, as soon as he discovers the fraud, he may rescind the sale altogether. If, however, he has so dealt with the article as to impair its value or alter its nature, he will lose his right to return it and recover the whole price, and will only be able to recover the loss caused him by the deceit practised upon him (*Clarke v. Dixon*, E. B. & E. 148). An action to recover the price on the return of the article would belong to a class of actions formerly called "actions for money had and received," their object being to recover from the defendant money which he has had or received, and for which he is accountable to the plaintiff. An action to recover damages caused by a misrepresentation respecting goods, would come under the description of an "action for deceit."

A seller will be liable in this manner for a false representation made by him, not only if he actually knew it to be false, but if he made it recklessly without reason to

suppose it to be true (*Taylor v. Ashton*, 11 M. & W. 415), or if it was of a matter which it was his duty to know (*Pulsford v. Richards*, 17 Beav. 87). It would, of course, be the duty of every tradesman to possess competent skill in his trade, and to make proper examinations of all articles offered for sale by him; and it would be his duty, therefore, to know all matters which a person of competent skill who made proper examinations would find out. He would be liable, therefore, for a false statement made respecting any such matter.

The fifth case in which the seller is liable for the quality of the article sold, is when he expressly warrants it. The meaning of saying "I warrant this article to be so-and-so," is in fact, "I promise that if it is not so I will indemnify you against the consequences." If, therefore, the article turns out to be different, the purchaser can sue the seller on his express promise to pay damages. A warranty, therefore, is not like a false statement on the seller's part. It does not give the purchaser the right to return the article (*Foster v. Smith*, 18 C. B. 156), but only to recover damages. It may be taken that, in many cases, when a question arises upon a warranty, the real facts were not known to either party at the time of the sale, but the seller was willing to take the liability on himself, considering, amongst other things, the small amount of damage that could result to the purchaser from a defect in the particular article warranted. The seller could not be compelled to take the article back and return the money, unless a special agreement was made to that effect. The words "I warrant" do not mean "I will take it back if it is not so" (*Foster v. Smith*, 18 C. B. 156).

A warranty is therefore a promise, and like all promises it requires a consideration to give it any legal force. If a man makes a purely voluntary promise by word of mouth, or even by writing signed by him but not having his seal affixed, our law attaches no legal liability to it. He cannot be compelled to perform it, or pay damages for breaking it. But if his promise was bargained for, if some benefit was conferred on him as the price of his promise, or if the person to whom he

made it gave up something for the sake of the promise, then the promise is binding at law.

In the case of a warranty, if it is given at the time of sale, the sale itself is sufficient consideration for it. But suppose a sale is made, and the purchaser afterwards comes to the seller to make inquiries about the goods, and the seller warrants them to answer some purpose. In this case, there is no consideration for the warranty, and the seller could resist any action which might be brought against him upon it. His giving it was purely gratuitous. If he had refused to warrant the goods, he could not have been compelled to warrant them, nor could the purchaser have disputed the sale. He incurred no liability, therefore, by warranting them.

The two Latin words *nudum pactum* are frequently used to express a promise without consideration; and a Latin maxim borrowed from the old Roman Law is also cited as laying down that such a promise will not give rise to an action: "*Ex nudo pacto non oritur actio.*"

In general a warranty does not require any formality to make it valid. It does not require to be given in writing or in the presence of any witness. It may be given by word of mouth only, and does not require any particular form of words; it is not even necessary that the word "warrant" should be used. The intention to give a warranty must, however, be evident.

In the case, however, of a sale of goods by written contract, any warranty which is given must be expressed in writing (*Harnor v. Groves*, 15 C. B. 667, 1855). For there is a rule that verbal evidence shall not be admitted to contradict a document in writing. And as the warranty would alter the rights and liabilities of the parties under the written contract, evidence of it would be excluded on this rule. The word "parol," which is derived from *parole*, the French for "word," is generally used to designate matters resting on word of mouth only, as opposed to matters attested by writing. Thus an agreement made by word of mouth only, would be

called a "parol agreement," and evidence given by word of mouth only is called "parol evidence." The rule above mentioned is, therefore, generally expressed by saying that "parol evidence is not admitted to vary written documents." The rule is subject to many exceptions, but it may be taken to apply to such a case as this: that when two persons have talked about making an agreement, and after discussing the terms, they come to be of one mind, and make a note in writing of their contract, that note will be considered to embody all the terms agreed upon, and it will not be open to either party to show that there was some further term which was verbally agreed to at the time. Any other matter, even though verbally agreed to, will be taken to have been abandoned unless inserted in the written memorandum. Too strict an adherence to this rule would probably work injustice in a good many cases, and it has been stretched accordingly, and would no doubt be stretched again, if it ever appeared that any person was endeavouring to take a fraudulent advantage of it (*Wright v. Crookes*, 1 Scott N. R. 685; *Jeffrey v. Walton*, 1 Stark, 267). Every prudent person, however, would do well to remember it, and on signing an agreement, take care that all the terms were stated in writing.

It is only where the contract for sale is in writing that the warranty ought to be in writing too. If the contract and warranty are made by word of mouth, it will not matter that a receipt in writing is given for the purchase-money, describing the articles but not mentioning the warranty. Such a receipt is not intended to be a statement of the terms of the contract, but merely evidence of the fulfilment of one of them (*Allen v. Pink*, 4 M. & W. 140). Still the description of the articles in the receipt will imply a warranty that they answer the description.

There is one point of considerable nicety which remains to be discussed on this subject. It has been already mentioned that it is not necessary that the word warrant should be used in giving a warranty, or that any particular form of words

should be used. The maxim of the law on this point is generally expressed by saying that every affirmation made at the time of a sale of goods is a warranty, provided it appears to have been so intended. And our law also acts on the principle that every man is presumed to intend the natural result of his own actions. We shall not, therefore, be very far wrong if we say that every affirmation made on a sale of goods is considered in law to be a warranty, if it would ordinarily be understood as such.

If a seller, therefore, make a statement which would ordinarily be understood as a warranty, and which turns out not to be true, he is liable as for a warranty.

Let us now compare this with the rules previously laid down under the heading of false representation. We saw that if a seller made a statement which he knew to be untrue, or which he ought to have known to be untrue, or which he had no grounds for supposing to be true, he was guilty of a false representation. The effect of a false representation differed from the effect of a warranty in that it entitled the purchaser to return the article if he had not altered its condition, while a warranty only gives him a right to damages (see the Sale of Goods Act, 1893, s. 11).

Suppose, then, a purchaser to have bought an article, relying on a statement made by the seller, which turns out to be false; in determining whether he can take any proceedings against the seller, and if so, what the proceedings should be, two questions will have to be answered. The first question will be, "Was the statement such as would ordinarily be understood as a warranty?" And the second will be, "Did the seller know it to be false, or ought he to have known it to be false, or did he make it rashly without any grounds for supposing it to be true?" If the first of these questions is answered in the affirmative and the second in the negative, the purchaser's remedy will be an action to recover damages for a breach of warranty. If the second is answered in the affirmative and the first in the negative, his remedy will be an action for the false

representation, in which he may recover damages in any case, and may recover the whole price if he can return the article in the condition in which he bought it. If both questions are answered in the affirmative, the proper course for the purchaser would be to bring an action making a claim on both grounds, so as to be sure of succeeding on one, though he might fail on the other. This is a course which may always be adopted in a doubtful case. If both questions were answered in the negative the purchaser would have no remedy at all.

The course of raising both cases in one action should also be adopted in the very common case in which the purchaser could not by his own knowledge answer the questions with certainty. It is obviously open to the defendant to say, "I intended, or I did not intend, my statement to be a warranty." And though his own statement of his intention would not be conclusive on the legal effect of his words, the question is necessarily so vague that it might often decide it. And again, he is the only person who can tell whether he knew or did not know the statement to be false, or whether he had or had not grounds for supposing it to be true.

It will be well to give some examples of statements which have been held to be warranties, and statements which have been held not to be so.

In one case, a picture dealer sold four pictures. A conversation took place between him and the purchaser at the time of the sale, and he made out a bill for them in the following words:—"Four pictures, views in Venice, Canaletto, £160." Canaletto is the name by which a Venetian artist, who lived in the middle of the eighteenth century, is usually known. Most of his pictures are representations of scenes on the canals in Venice. The purchaser imagined that the pictures he was buying were original paintings by this artist, but he afterwards found out that they were copies, not worth a quarter of the sum which he had given for them. He therefore brought his action against the dealer, claiming that the dealer had, in effect, warranted the pictures to be Canaletto's.

The bill was given in evidence, and evidence was also given of the conversation which took place at the time, of which each of course gave his own account. The result was, that it was held that the bill alone amounted to a warranty, and the plaintiff got a verdict accordingly. This case took place in the year 1836, and the artist who was named (Canaletto) had lived up to the year 1768, so that it was a case in which a dealer ought to have known whether the pictures were genuine or not. If the artist had been of greater antiquity, and one about whose works more uncertainty existed, the case might have been different (see *Jendwine v. Slade*, 2 Esp. N. P. C. 572).

In another case, which took place in the year 1821 (*Shepherd v. Kain*, 5 B. & Ald. 240), the defendant advertised for sale a copper-fastened ship, adding that it was to be sold with all faults. The plaintiff had an opportunity of inspecting the ship, but purchased it without doing so, and afterwards discovered that the ship was not a copper-fastened ship in the sense in which that expression was ordinarily used in the trade, but was only partially copper-fastened. On an action being brought, it was held that the defendant, by advertising the ship as a copper-fastened ship, had warranted it to be so, and that the fact of its being sold with all faults did not affect the matter; if so, it was said, a man might advertise silver forks and spoons to be sold with all faults, and sell plated ones and claim to be exempt from liability.

In another case, which took place in the year 1854 (*Hopkins v. Tanqueray*, 15 C. B. 130), a man sent a horse to Tattersall's to be sold by auction there. The day before the auction, he went down to Tattersall's stable and saw a friend of his examining the horse's legs, whereupon he said, "You need not examine his legs, you have nothing to look for; I assure you he is perfectly sound in every respect." His friend replied, "If you say so, I am perfectly satisfied;" and the next day he bought the horse at the auction. The horse turned out not to be perfectly sound, and only to be worth about half the price

that was paid for it, and on that being discovered, the purchaser brought an action against the seller, claiming that the words he had spoken in the stable amounted to a warranty of the soundness of the horse. It was admitted that the defect in the horse was unknown to the seller at the time, and was not such as to render him liable as for a false representation. It was also shown that in putting horses up for sale at Tattersall's, it was the custom to sell them sometimes with a warranty and sometimes without a warranty, and that the horse in question was sold without one. On the whole, it was held that the words spoken in the stable did not amount to a warranty. It was said that, if the purchaser had bought the horse in the stable directly after the conversation had taken place, the words would have amounted to a warranty, but that as the horse was offered the next day to all the world without a warranty, the words spoken in private the day before must be taken to be merely a statement by the seller of his own belief, not having any legal liability attached to it.

Before leaving this subject, it will be well to call attention to the fact, of which one of the preceding cases is an example (*Shepherd v. Kain*, 5 B. & Ald. 240), that a seller may be liable, not only for a statement made directly to the purchaser, but also for a statement made generally in an advertisement which the purchaser saw and relied upon.

CHAPTER VIII.

ACCOUNTS.

IN the chapter on sales of goods, an observation will be found that a tradesman, on supplying goods on credit, should make an entry of the fact in his books. It is true that, on suing for the price of the goods, he would have to call as witnesses the person to whom the order for the goods was given and the person who delivered the goods, and he could not himself give his own books in evidence to prove that the goods had been ordered and supplied. But he might be cross-examined by the other side, and asked whether he kept books, and be called on to produce them. Then, if he did not keep books, or if his books did not bear out his statements, his story might be disbelieved. This is a general rule, that a man cannot give his own accounts in evidence, but he may be called upon to produce them, and a great deal will depend upon their contents when produced.

A case is said to have arisen once in which a lady, being about to travel abroad for a little time, gave several of her servants a month's notice before her departure. On her return, one of them sued her in the County Court for some wages, alleging that her mistress had gone away without paying her. The lady swore that she had paid the wages, and was then asked whether she kept accounts. The answer was "No," and the case went against her in consequence. The judge had only before him oath against oath. The financial transactions of the servant merely consisted in receiving her wages each month and spending them. She was not likely to forget

whether she had or had not received a sum which was so important to her as a month's wages; and she was not expected to keep accounts. On the other hand, the financial transactions of the mistress consisted in drawing cheques, or receiving them from her husband, paying the wages of several servants, paying the bills of the laundress and half a dozen tradesmen every week, and other odd bills and personal expenses. She might very easily think that she had made a payment when she had not really made it; and she was expected to keep accounts. If she had kept accounts, and had produced them, and they had appeared on the face of them to have been properly kept, and to have been balanced at weekly or other frequent intervals, and they had contained an entry of the wages in question, and balanced with it and not without it, the lady's story would probably have been believed. And it would not be necessary for a lady in such a position to specify every penny which she spent. No one is expected to take a shilling'sworth of trouble over sixpence. If the balancing of the accounts showed each week a small sum of unspecified items, such as might well be caused by cabs, omnibuses, lunches, teas, and other like little matters, the accounts would be practically correct.

In our country no precise method of keeping accounts is prescribed by law for any persons; but still, all persons are expected to keep such accounts as are ordinarily kept by prudent persons in their circumstances, and parties who fail to keep accounts often suffer, when disputes arise, as instanced above; also, if any man is adjudicated bankrupt, he is ordered to render accounts, and if he is unable to do this satisfactorily, his discharge may be delayed, or be made subject to severe conditions.

In some foreign countries the law prescribes certain accounts to be kept by all persons who engage in trade, and in particular, requires them to make once in every year a full balance-sheet of their affairs, and for that purpose to take stock, *i.e.* count and record the number and quantity of all

goods in their possession. If a trader in such a country goes bankrupt, he is at once called upon to produce his two or three last balance-sheets, and his fate under the bankruptcy will depend very much on whether they are, or are not, in good order.

Of course, if any persons are accountable to others, they owe a duty to those others to keep accurate accounts of all monies for which they are so accountable. Thus, bankers are accountable to their customers, collectors of rent and other agents are accountable to their principals, trustees are accountable to their *cestuis que trustent*, or beneficiaries, as they are called, executors are accountable to legatees and devisees, and administrators to heirs-at-law and next-of-kin. All these are bound to keep strict accounts, and show them, whenever called upon so to do, by the parties to whom they are accountable.

There are also some cases in which accounts may be given in evidence after the death of the person who kept them; the two principal rules being that entries in accounts, which were made in discharge of a duty, and entries which are against the interest of the person who made them, may be given in evidence.

CHAPTER IX.

THE PUBLIC FUNDS.

No doubt all readers have heard such expressions as "the funds," "consols," and "dividends," and have a general idea of the meaning of these words. An attempt will here be made to explain their meaning more accurately.

The public funds, or simply "the funds," is a word used to denote the national debt of the country, looked upon from the investor's point of view. The origin of the expression will be shown below.

Consols is the popular name for the principal portion of the public funds, other parts being called (1) The $2\frac{3}{4}$ per cent. Annuities, (2) The $2\frac{1}{2}$ per cent. Annuities, and (3) The Local Loans stock. Consols is a short name for $2\frac{3}{4}$ per cent. Consolidated Stock. A few years ago the stock called "Consols" was less extensive than at present, and had the title of Consolidated 3 per cent. Annuities; and there were then other portions of the funds called respectively the Reduced 3 per cent. Annuities and the New 3 per cent. Annuities. These were all 3 per cent. stocks, but in the year 1888, the state of the money market was such that the Government found itself able to borrow money on better terms, and was able to give notice to the holders of the stocks that, unless they would consent to accept, in place of their old stock, a new stock bearing interest at $2\frac{3}{4}$ per cent. until April, 1903, and $2\frac{1}{2}$ per cent. thereafter, it would pay them off. And as an inducement to holders to consent to this arrangement, the new stock was not to be redeemable until April, 1923. Some

holders consented and others took their money, and the result has been that all the old Consols, and New and Reduced 3 per cents. have disappeared, and in place of them we have new Consols bearing interest at the rates above mentioned. This change was effected under the National Debt Conversion Act, 1888 (51 Vict. c. 2), and as Mr. Goschen was the Chancellor of the Exchequer at that time, the new Consols are sometimes called "Goschens;" their statutory title, however, is $2\frac{3}{4}$ per cent. Consolidated Stock until the 5th of April, 1903, and thereafter, $2\frac{1}{2}$ Consolidated Stock (National Debt Conversion Act, 1888, s. 2, § 4). It happens, however, that some companies have stocks called "consolidated stock," and it may, therefore, sometimes be convenient to call the new Consols "Government Consolidated Stock" by way of distinction.

The $2\frac{3}{4}$ per cent. and $2\frac{1}{2}$ per cent. funds are still called "annuities," which was the appellation of all the funds a few years ago; and the new Consols are defined to be "a capital stock of perpetual annuities" (National Debt Conversion Act, 1888, s. 4, § 1).

We will next consider the word "annuities." The Government has borrowed various sums, but it has not bound itself to repay them. It has engaged to pay its creditors interest at a certain rate, subject to a right to redeem the liability to pay interest after a certain number of years, by paying a certain sum of money. The only money which it has undertaken to pay, is the annual interest. The liability to pay that may be redeemed after a certain time, or it may go on for ever. The creditor has no right to call for his capital, he is only entitled to call for his interest. He is only entitled to a certain amount of interest each year, to an annuity in fact. Many people are accustomed to use the word "annuity" to indicate a series of yearly payments during the life of an individual, but there is no reason for restricting it to this case. An annuity may be payable during a fixed term of years, it may be a life annuity, or it may be perpetual. The funds were, therefore, called annuities because they entitled

the holders to receive certain sums every year until they were redeemed.

In legal documents and orders in Chancery, the terms "Consolidated 3 per cent. Bank Annuities," "Reduced 3 per cent. Bank Annuities," and "New 3 per cent. Bank Annuities" were habitually used to describe the Consolidated, Reduced, and New Annuities. It might require some research to discover when the word "bank" first came to be inserted in the title of these funds in legal documents; but a conjecture may be made. The interest on all Government debts is now paid at the bank; but it appears that, at one time in the eighteenth century, some Government annuities were paid at an office called the South Sea House. It is probable, therefore, that the name "bank annuities" was given to Consols and other funds at that time, because they were paid at the Bank of England.

In talking of portions of the funds, it is not usual to denote them by the amount of the annuity which the holder is entitled to receive, but of the capital amount which would be payable to him if the Government wished to pay him off. This is called so much "stock in the funds." Thus, an investor who, under the Act of 1888 lent £100 to the Government, on the terms of receiving £2 15s. per ann. until April, 1903, and £2 10s. thereafter, would be said to hold £100 stock in the new Consols, and would be so entered in the books of the bank.

It will be seen that there is a difference between £100 sterling and £100 stock in Consols. The latter represents the right to receive the promised interest until 1923, and thereafter until the capital is repaid. The cash value of such a right varies with different states of the money market. It is the cash value of £100 stock in Consols that is quoted in the newspapers every day. Thus Consols 112½ in a morning newspaper, means that £112 12s. 6d. was paid on the previous day for £100 stock in Consols.

The sums paid to the holders of stock by way of interest are called the "dividends on the stock." All readers will,

doubtless, remember that the word "dividend" is found in books of arithmetic, where in a division sum it indicates the number which has to be divided by another number, that other number being called the "divisor," and the result being called the "quotient." The question may well be asked, what connection is there between the dividend in a division sum and the interest on the National Debt. Well, the connection will be found if we consider the situation of shareholders in a railway company. At the end of every year, or half year, they make up their accounts and determine the profit, and ascertain what amount of money there is in hand to be divided among the shareholders. This sum may properly be called the dividend; and by a little change in the use of the word, each shareholder's portion of the sum to be divided might be called his dividend, or the dividend in respect of his share. Then, when the word "dividend" has come to be a general term for denoting the income on a share in a company, it is easy to see how it came to be applied to income on a share in the funds. It is curious that the word "dividends" should thus have passed from joint-stock companies to the National Debt, as the latter was the earliest to attain importance; but such, nevertheless, appears to have been the case. Certain it is, that in the early days of the National Debt the word "dividend" never appears as a name for the payments made by way of annuities to the national creditors, but now it is in general use.

The dividends on all the Government funds are now paid quarterly on the 5th of January, April, July, and October. Prior to the conversion in 1888 and back to 1869, the dividends on the old Consols were paid on the 5th of January and July, and those on the New and Reduced Annuities on the 5th of April and October. While, prior to 1869, the case was the same, except that the October dividends were payable on the 10th of that month. The 5th of October was substituted for the 10th in 1869, for the sake of uniformity. The dividend days prior to 1869 were those known as the old quarter-days,

being the days which, under the new style of the calendar, represented the quarter-days under the old style. The alteration of style in our country was made in 1752, in which year the day after the 2nd of September was called the 14th; but in altering the style, it was only the names of the days that were altered, and it was expressly provided that all payments should become due on the same real days on which they would have become due if the style had not been altered. Amongst other payments there were Government annuities then existing, payable on the four usual quarter-days, namely, the 25th of March, the 24th of June, the 29th of September, and the 25th of December. On making a calculation, it will be found that these days became represented in the new style by the 5th of April, 5th of July, 10th of October, and 5th of January.

The words "consolidated" and "reduced" still remain to be explained. In the early days of national borrowing, the usual course was to lay on some fresh tax, and then borrow money on the security of the revenue to be derived from it. The proceeds of the tax were directed to be carried to a separate fund, out of which the interest due to the persons lending money on its security was first to be paid, and the balance only carried to the general account. Thus, at various times, different loans were contracted on the security of taxes on stamped vellum and parchment (4 Geo. II. c. 9, 1731), wines and spirits (16 Geo. II. c. 13, 1743), houses and windows (20 Geo. II. c. 3, 1747), coaches and carriages (20 Geo. II. c. 10, 1747), and imports (21 Geo. II. c. 2, 1748). The revenue of each of these taxes was carried to a separate account at the Bank of England, and a separate set of annuities was payable out of it. The trouble and inconvenience attending such a system are obvious, and in the course of time, with the consent of the creditors, the bulk of the annuities become consolidated into one stock of Consolidated 3 per cent. Bank Annuities, and the various funds derived from the separate taxes became consolidated in one fund called the "Consolidated Fund."

This last expression is perhaps unfortunate. The Consolidated Fund is the name for the income of the country, and the Consols which are the bulk of what is called "the funds" are a part of its debt. The ambiguity arises from the fact that when we have invested our money on the security of the public funds, that is to say, the revenue of the country, we are apt to say our money is "invested in the funds," and so the investment comes to bear the same name as the security.

With respect to the Reduced Annuities, that stock also arose from a consolidation of other annuities payable in April and October, but it happened that these annuities had, at their origin, been agreed to be paid at $3\frac{1}{2}$ per cent. for a certain number of years, and afterwards at 3 per cent. Hence, after the reduction had taken place, they were aptly described as the "Reduced 3 per cent. Annuities."

The practice of paying a higher rate of interest for a certain period, or giving some other benefit to the subscribers to a loan besides their permanent interest, was common in the last century. The plan generally adopted for raising the wind, was to accompany the loan with a lottery, and give each subscriber of £100 one ticket. A considerable sum of money, of course, had to be set apart to provide prizes for the lottery, and the system was moreover prejudicial to the morality of the people, though it was, no doubt, convenient to the novelists and dramatists of the day.

The year 1752, the same year in which the change of the calendar was effected, may be put down as the date at which both the Consols and the Reduced Annuities originated, for in that year the first consolidation took place (25 Geo. II. c. 27).

The consolidation of all the loans, however, could not be effected at a blow, and even after this first attempt many new loans were raised on the security of new taxes, the proceeds of which were carried to separate funds. In general, however, a year or two after any such loan was raised, it was, with the consent of the creditors, consolidated with those already

existing [see 30 Geo. II. c. 19, 1757, £3,000,000 raised on duties on newspapers, etc., consolidated by 32 Geo. II. c. 22, 1759; 32 Geo. II. c. 10 (1759), £6,600,000 raised on import duties, consolidated by 33 Geo. II. c. 12 (1760); 33 Geo. II. c. 7 (1760), £8,000,000 raised on malt duties, consolidated by 2 Geo. III. c. 9 (1762); 1 Geo. III. c. 7 (1761), £11,400,000 raised on duties on beer, consolidated by 4 Geo. III. c. 18 (1764)]. In other cases, the new taxes were directed to be added at once to the general fund, and the new annuities payable in respect of fresh loans were added to those already existing.

From expressions used in Acts of Parliament of the period, it may be inferred that the annuities payable in January and July were called the "Consolidated 3 per cent. Annuities," and those payable in April and October the "Reduced 3 per cent. Annuities," shortly after their respective consolidations in 1752 (Consolidated, see 32 Geo. II. c. 22; 33 Geo. II. c. 12; 21 Geo. III. c. 14; Reduced 5 Geo. III. c. 23, s. 12; 12 Geo. III. c. 63).

The name "Consolidated Fund," however, is of much later date, having been introduced in the year 1787. Previous to that year the term "sinking fund" was the name for the fund comprising the general revenue of the country. The proper meaning of the word "sinking fund" is a fund for the purpose of sinking, or gradually paying off the National debt. Such a fund was instituted in the beginning of the eighteenth century, but special loans were made on the security of it, as well as of other funds, and it happened that it was the fund with which the others were one by one united, and the name "sinking fund" became applied to them all. In 1786, however, a real Sinking Fund was instituted by setting apart £1,000,000 a year, out of the revenue of the country, to be paid to Commissioners for Reduction of the National Debt (26 Geo. III. c. 31), and in the next year the management of the revenue was re-organized, the old Sinking Fund was abolished, and the permanent taxes of the country, and all other public monies not specifically appropriated by Parliament, were ordered to be carried to one

fund, to be called the "Consolidated Fund" (27 Geo. III. c. 13, ss. 48-52).

Having given this account of the origin of the funds, and of the various words employed in speaking of them, we will next proceed to describe how an investment may be made in them.

Lists of the holders of all the stocks are kept at the Bank of England arranged alphabetically. If any one goes into the Consol department, he will see a number of counters with big books on them, and clerks behind, and on the walls behind them, cards bearing the different letters of the alphabet. The books on the counter under the letter A will thus contain the names of all stock-holders beginning with A, and the amount of stock held by them, and so with the other letters. Thus, in order to invest money in the Consols, the investor must purchase the stock from some one of the existing owners. But he would not do this himself, but would get some broker, who is acquainted with the ways of the bank, to do it for him. A great number of brokers live in the neighbourhood of the Bank, in various sets of chambers, with their names and vocation at the door, and if any intending investor were not acquainted with any broker, he would have no difficulty in getting introduced to one. The investor would then have nothing to do but to give the broker the amount of money he wanted invested, and tell him the name in which he wished it to stand in the bank-books, and the broker would manage all the rest; and here we may mention that any amount of money, however small, may be invested in the funds, provided that it does not involve any fraction of a penny. The investor might either instruct the broker to invest a sum, say of £50, in the Consols, in which case the broker would buy as much Consols as £50 would purchase, after deducting half a crown as his fee for brokerage; or the investor might instruct the broker to purchase some amount, say, £50 stock in the Consols. In the latter case, the amount to be paid by the investor would not be determined exactly until a contract for purchase of the stock was made.

The broker would then go into the stock-exchange and make a contract for the purchase of the Consols from some one of a class of people called "jobbers" or dealers. The word jobber is not a very euphonious name, and it implies to some people an idea of unfair dealing, or at least of hazardous speculation. There is no real foundation for any such idea, nor is there anything undignified in the trade of a jobber. A jobber is merely a person on the Stock Exchange who employs his capital in purchasing whatever investments any other people wish to sell, and in selling whatever they wish to buy. Of course, a jobber has a buying-price and a selling-price for each investment, but it is perfectly fair that it should be so; he accommodates the public and is entitled to a profit accordingly. And it is pretty clear that there are no tradesmen whose profit is so small a percentage on the value of the goods they deal in, as that of jobbers is. In Government funds the jobber's profit is only half a crown per £100. In stocks, less frequently dealt in, it is greater, but rarely exceeds 2 per cent. The course of dealing between a broker and a jobber, is that the broker asks the jobber for a price for the stock with which he is concerned, without telling him whether he wants to buy or to sell; and the jobber in reply names two prices, differing only by such a small percentage as above mentioned, at the lower of which he will be willing to buy, and at the higher of which he will be willing to sell, any reasonable amount of the stock named. The broker then mentions whether he wishes to buy or to sell, and the agreement is made. We may here remark that both the buying and selling-prices of stocks are usually quoted in the newspapers. In general, contracts for the sale or purchase of stock are made to be completed at an interval on the next settling-day as it is called; but we will suppose the simple case of a purchase of Consols to be completed at once; and we will suppose also, what would probably be the case, that the jobber who has made the contract, has some Consols standing in his name. The jobber and broker would then go into the bank, the broker would pay the jobber the price of the Consols,

and the jobber would sign his name in a book called the "transfer-book" and fill in a form, procurable in the bank, called a "stock-receipt," which would be a receipt for the money paid by the investor as the price of the Consols, expressed to be in consideration of a transfer of them. The broker and jobber would then take this form into the department containing the books with the names of the stock-holders, and get the amount of stock sold deducted from the amount standing in the name of the seller, and get the purchaser's name entered as the holder of that amount, and thus the transfer would be completed. The broker would then take back or send to his customer the stock-receipt, which would show him that the requisite amount of Consols had been transferred into his name. The address and description of the investor are usually added to his name. This appears to afford protection against any attempt of any other person to personate him.

It may be well to make a few remarks concerning these stock-receipts. The paper itself has done its work when it is given by the broker to his customer. It is evidence at first of the sale of the stock, but as soon as that is actually transferred into the purchaser's name, no evidence of the sale is required. After that, the receipt only shows the purchaser that the stock has been bought by his broker, and as soon as it is given to him that purpose is fulfilled.

If the purchaser goes again to sell the Consols he has bought, he will not be required to produce the stock-receipt given him on his purchase of them; and if any one else goes with the stock-receipt it will not prove that he is the person named in it. Still, it is well for an investor to take care of his stock-receipts, and not let them fall into the hands of third parties. Tuesday, Wednesday, Thursday, and Friday are regular transfer days; but transfers may also be effected on Mondays and Saturdays on payment of a small fee.

The simplest and probably the original mode of obtaining dividends on Government funds is for the stockholder to go personally to the Bank and get them. On the day on which

they are payable, or on any subsequent day, the stock-holder may go to the Bank of England and inquire for the Consol Dividend department, where he will again find books with clerks behind them, and the letters of the alphabet overhead. He will find his letter and give his name, whereupon the clerk will turn to it and ask him the amount of his stock and his address and description, and on the first occasion he will have to get his banker or broker or some other person known at the Bank to identify him. He will then have to sign his name in the book, and the clerk will give him a document in the nature of a cheque called a "dividend-warrant," on which also he will have to sign his name, and he will then be able to get it cashed at another counter.

The second way of getting dividends is by giving some other person a written authority to receive them. This authority must be in a form prepared by the Bank, and the signature of the stock-holder has to be attested in the manner directed by the Bank. An authority of this nature is called a "power of attorney." The word "attorney" originally meant any person appointed to act for another in any matter. We are accustomed to confine the word in general to persons whose profession it is to act for others in conducting proceedings at law. But a written document giving one person power to act for another in any matter, is still called a power of attorney. Powers of attorney to receive dividends are generally given by stock-holders to their bankers. Every banker in London probably holds a great number of such powers from various customers. The banker then receives all the dividends as soon as they become due, and puts down the amount to the account of the various owners in his books.

The third mode of receiving dividends is by having them sent by post. This mode was introduced in 1869, and has, no doubt, proved a great boon to stock-holders and, indeed, made the Government funds a more desirable investment than they were before (32 & 33 Vict. c. 104, and 33 & 34 Vict. c. 71). Any stock-holder may procure from the bank, either by post

or on a personal application, a form of request to have his dividend-warrants sent by post, and fill it up and send it in to the bank. The address to which he wishes the dividend-warrants sent, must be in England, Scotland, Ireland, Wales, or the islands adjoining. If this form is returned to the bank properly filled in, his dividend-warrants will thereafter be sent by post to him at the address given. A post dividend-warrant is in the form of a cheque on the bank, payable to the order of the person entitled to the dividends, and crossed in blank. The result of this, in accordance with the principles laid down in a previous chapter, is that, being drawn to the stock-holder's order, it must be endorsed by him, or, in other words, he must write his name on the back; and, being crossed, it must be presented through a banker. These two requirements offer a sufficient safeguard against the money being obtained by any other person in case of the warrant being stolen from the post.

Lastly, we have to consider how the holder of stock in the funds may sell it. For this purpose, he must either go personally to the bank or authorize some other person to sell the stock for him by a power of attorney. The power of attorney, in this case, also has to be in a form prepared by the bank, and the stock-holder must sign it in the presence of two witnesses, and the two witnesses must sign it also as witnesses. The stock-holder, or his attorney, must then go to some broker, for stock can only be sold through the medium of a broker, and direct him to sell the stock. The broker will then first procure some one, probably a jobber, to buy the stock, and arrange with him for payment of the price; and then the stock-holder, or his attorney, will go to the bank with the broker, and sign the transfer-book and stock-receipt, take the latter to the department containing the names of the stock-holders, and get the amount of the stock struck out of the name of the seller and entered in the name of the purchaser. And the broker will then give his customer the money produced by the sale of the stock, deducting his charge of half a crown per

£100. The operation will, in fact, be conducted in the same way as on the original purchase of the stock.

On selling stock, the seller will have to give his name and description in exactly the same words and letters as he gave it on buying the stock. And he will also have to name the sum of stock correctly. It may be observed that the requirement of a broker to conduct every sale of stock, is a great protection against attempts by forgers to sell stock belonging to other persons, and it also affords a means of identifying the real owner of stock. For every transfer is countersigned by the broker, and he can therefore be appealed to as a witness at any time.

A power of attorney to sell stock is subject to a stamp-duty, the amount of which is 5s. if the stock is £20 or under, and 10s. if it is over £20. A power of attorney to receive payment of dividends is also subject to a stamp-duty, the amount being 1s., if the power is given in respect of one payment only, and 5s. if it is given in respect of more than one. There is no duty payable on a request to send dividend-warrants by post (Stamp Act, 1891, Sched. tit. Letter).

From the preceding remarks, it will appear that though an investment in the funds pays a very small rate of interest, still, both the interest and the principal can be obtained at very little trouble and expense, and the investment is a safe one, having the credit of the country pledged to its payment.

It will be observed, however, that in the case of purchasing stock in the funds, the purchaser's signature is not required to any document; and, if he has instructed some banker, broker, or solicitor to make the investment for him and supplied them with the money, the only evidence which will be producible to show that the investment has been made, will be the stock-receipt. Every investor should, therefore, be careful to ask for the stock-receipt, and every honest agent employed in such a matter should be careful to send it unasked. Honest men, who do not spontaneously exhibit the proof of their having done their duty in such cases, play into the hands of rogues,

and enable them to embezzle money without immediate detection.

When we come to speak of shares in companies, we shall find that the purchaser's signature is required for every transfer. That fact affords a safeguard to an investor who employs an agent to make an investment for him. For, if he knows that his signature is required for a transfer, he will know that the investment has not been made unless the transfer is forthwith forwarded to him.

It is further worth mentioning that stock in the funds may be transferred into the names of two, three, or four people, as well as into a single name, but not into the names of more than four. This point will be material when we come to consider the position of trustees.

Besides the dealings which have been described in this chapter, investments can be made in the Government funds through the Post Office Savings Bank to the extent of £200 stock in any one year, and £500 stock altogether; and the dividends on such stock can be collected through the Post Office Savings Bank and placed to the account of the investor there; and the stock can be re-sold through the same medium.

CHAPTER X.

SHARES IN COMPANIES.

A COMPANY consists of a number of individuals united together by law so as to be designated by the single name of the company. They are then said to be incorporated. Some important companies, such as the railway companies, have been incorporated by special Acts of Parliament; while other companies have been formed by complying with the terms prescribed by certain general Acts of Parliament, called the Joint Stock Companies Acts. In either case, the result is that a certain number of persons are formed into a company, having a certain name and an official seal, with power to hold property by that name, to enter into contracts by that name, affixing the company's seal thereto, to bring actions in that name, and to be sued in that name. The seal usually bears the name of the company, and is so formed as to be capable of producing an impression on paper. Furthermore, the property of the company is liable to be taken in execution to satisfy any debts incurred by the company; but the members or shareholders of the company are not personally liable for the debts of the company. The documents, however, which regulate the constitution of the company, specify the names of the original members of the company, and the number of shares taken by each, and the nominal amount of each share expressed in pounds sterling. They also provide for a register of shareholders being kept, showing the names of all persons who afterwards become members of the company, and the number of shares held by each. Other persons may become members,

either by having fresh shares issued to them, or by purchasing shares from existing members. Each share is called a share of so many pounds, and the company is entitled to require that number of pounds to be paid to it in respect of each share; and the documents incorporating the company show the number of shares which may be issued. The register of shareholders, therefore, specifies the amount which has been already paid in respect of each share, and the shares are all numbered for the sake of distinction. By deducting the amount paid from the total nominal amount of a share, the difference shows the further amount which the holder of the share may be called upon to pay to the company in respect of it. When the full nominal amount of a share has been paid to the company, the holder of the share is under no further liability. It is said to be "fully paid up." A company may incur debts to any extent and be unable to pay them; but the creditors of the company will be unable to make fully paid shareholders contribute a penny towards paying its debts; moreover, other shareholders will only be liable to the extent of the unpaid portion of the nominal amount of their shares. Stock-brokers habitually issue monthly lists of investments, and against every company mentioned in these lists they specify the nominal amount of each share, and the amount which has been paid upon it, so that the difference shows the amount of liability attaching to each share.

Fully paid shares may be, and often are, converted into stock, and such stock is naturally susceptible of more minute sub-division than shares are; but the regulations of many companies provide that their stock shall not be divided, except in multiples of £10.

The regulations of a company always provide for the election of a certain number of directors to manage the business of the company, and prescribe that any document to which the seal is attached shall be signed by a certain number of the directors. The other shareholders take no direct part in managing the business of the company, but

meetings of the shareholders are held at annual or other intervals, at which the directors submit reports and accounts for approval, and the amount to be distributed in dividends is voted, directors are elected, and any special matters which require the sanction of the shareholders, are discussed and decided on. The documents which originally constitute a company always define the purpose for which it is formed, *e.g.* for making and working a certain railway, for carrying on banking, for life insurance, fire insurance, water-works, a brewery, or working a mine. The directors then have always power to do all things incidental to the ordinary business of the company; but in general, they cannot engage in anything beyond the ordinary business of the company without further authority from the shareholders; and it is illegal for the directors and shareholders together to engage the company in matters outside the purpose for which the company was originally constituted. When a company is not incorporated by special Act of Parliament, it is generally formed by being registered at Somerset House, and the first document to be registered is called the "memorandum of association." This document constitutes the basis of the company; it is a sort of bargain between the parties forming the company and the rest of the world, and thereafter all persons dealing with the company know that the party, with whom they are dealing, is the company as defined by the memorandum of association. As that document constitutes the company, it is not permissible for all the members of the company to alter it, even though they should all agree to do so. A second document, called the "articles of association," is regularly drawn up on the formation of a company. This document constitutes a bargain between the members of the company themselves, and may be varied from time to time by resolutions passed and confirmed at meetings of the shareholders, held after due notice. In general a shareholder, instead of attending a meeting, may authorize another shareholder to vote for him. Such an authority must be given in writing, and is called a "proxy," and

it must bear a penny stamp. It is a common practice to send to each shareholder a form of proxy, together with the notice convening the meeting; so that, if unable to attend personally, he may nevertheless be able to give his vote.

Besides ordinary shares in companies, we often hear of preference shares, preferred shares, deferred shares, debentures, and debenture stock. The name "preference shares" is ordinarily given to shares on which the ordinary shareholders guarantee that a certain dividend shall be paid before any dividend at all is paid on the ordinary shares. Such a dividend may be at three per cent., or four per cent., or five per cent., or any other rate. In general, preference shares are not entitled to anything beyond the stipulated dividend, however great the profits of the company may be; but, on the other hand, if the profits of any one year are insufficient to pay the guaranteed dividend, the deficiency is liable to be made up out of the surplus profits of any subsequent year, before the ordinary shareholders receive anything.

The names "preferred shares" and "deferred shares" are generally found together, and indicate that the profits of each year are applied first in paying a certain dividend to the preferred shares, and that the surplus is divided among the deferred shares. In general, preferred shares never take more than the stipulated dividend, and, if the profits of any one year are insufficient to pay that, they have no claim to have it made up out of the profits of any subsequent year.

Holders of debentures are generally in the position of creditors of a company, and not of shareholders. They generally have a charge upon all the property of the company for their principal as well as their interest; sometimes they are entitled to claim payment of their capital after a certain number of years, but in other cases, they cannot call for repayment of their capital unless some default is made in payment of their interest. In general, they are bound to permit the company to carry on its business, and cannot seize and sell any property of the company which is required for that purpose;

but they may procure the appointment of a receiver to receive the profits of the company and satisfy their claims, before anything goes to the shareholders. Debenture-holders also, being secured creditors, take precedence over unsecured creditors of the company, while all creditors take precedence over all shareholders, if the company is wound up.

Debentures are often issued for a certain number of years only; and, when they are so issued, the company may pay them off at the expiration of the period named. Sometimes debentures are issued to constitute a perpetual charge upon the company, and sometimes debentures are converted into stock, or debenture-stock is issued in the first instance.

It is only possible to indicate the general effect of the terms which have just been mentioned. The rights of various classes of shareholders, stock-holders, and debenture-holders admit of endless variety, and these rights, in any particular case, can only be ascertained by examining the documents by means of which the shares, stock, or debentures are created.

Registers are kept by every company of all its shares, stock, and debentures. The register of stock very much resembles the register of stock in the funds, which is kept at the Bank of England. The registers of shares and debentures involve the further point that all the shares and debentures are numbered. When first any stock or shares are issued to any person, the name of the holder is entered in the register, and a certificate also is drawn up and given to the holder, certifying that he is the holder of so much stock or of so many shares in the company, adding the numbers of the shares. Printed forms of certificates are kept by all companies; and, when a certificate is required, one of the forms is filled in and signed by the secretary and one or more of the directors, and stamped with the seal of the company.

In the case of debentures the holder receives, not a certificate, but a document called a "debenture," sealed by the company, containing a covenant to pay the holder a certain principal sum and interest, and charging the property of the

company therewith. Debentures may be made payable to the first holder or his order, or they may be made payable to bearer, in which case they are alienable in the manner already described respecting cheques payable to order and bearer; but debentures are generally made transferable like shares, in manner about to be explained.

If a holder of shares wishes to sell them, he must of course first find a purchaser. This can generally be done by means of the secretary of the company, in the case of small companies, whose shares are not quoted on the London Stock Exchange, and by means of a stock-broker in the case of companies whose shares are so quoted. When a purchaser is found, and the price is agreed upon, a printed form of transfer must be obtained from the company, and filled up with the names of the vendor and purchaser, the numbers of the shares, and the price given. This form expresses that, in consideration of so much money, the vendor transfers to the purchaser so many shares in the company, giving their numbers; and adds that the purchaser accepts them, subject to all the conditions upon which the vendor held them. The transfer must be executed by the purchaser as well as the vendor; and it is liable to a stamp-duty at the rate of ten shillings for every £100 of the price of the shares. A duty thus varying with the price is called an "ad valorem duty."

A word may be said about the execution of a transfer. It is framed as a deed to be signed, sealed, and delivered by each of the parties in the presence of a witness; and at the foot of it, to the left, will be seen printed several times—

"Signed, sealed, and delivered by the

"above-named

"in the presence of"

with a space subjoined for the name, address, and description of the witness. This is called an "attestation clause," and is repeated several times to provide for any case in which there are several transferors or transferees. It has been mentioned

in the chapter on the funds, that stock therein might stand in the names of any number of persons, not exceeding four. Each company can make its own rule on this subject, and many companies adopt the same rule as the funds. There may, therefore, be several transferors or transferees, and several attestation clauses may be required.

With respect to the mode of execution, it will be seen that the witness attests that the document was signed, sealed, and delivered in his presence. The party executing the transfer should, therefore, sign it in the presence of the witness. The signature ordinarily employed by the signatory (*i.e.* the person signing) is sufficient; for instance, his surname or last surname, preceded by the initials of his prænames, or some or one of them. But the full name of each party is always inserted in the body of the document and in the attestation clause. As to sealing, any seal may be used as the party's seal for the time being. The days have long gone by when each individual, like a company now, had his own seal, which was different from everybody else's, and served to identify him, and formed in fact his signature. Furthermore, when a transfer is prepared by a secretary of a company, as it often is, or by any skilled person, he attaches it to as many wafers as there are parties; and each party writes his name against one of the wafers and then places a finger on the wafer, and that act is considered as equivalent to sealing, and justifies the witness in certifying that it was sealed by the party in his presence. The transfer must also be delivered, and that is accomplished by uttering the words "I deliver this as my act and deed," the finger being usually kept upon the wafer while the words are being uttered, so as to identify the document to which the words apply.

When the transfer has been executed by all parties, it must be taken to the office of the company to be registered, and the company will also require the certificate of the shares, which was issued to the old holder, to be given up to them now that the shares are sold. Assuming the certificate to be given up, and the transfer to be in proper form, the register of shareholders

will then be altered by removing therefrom the name of the vendor as holder of the shares specified in the transfer, and inserting the name of the purchaser as the holder of them. The purchaser's address will, of course, be required to enable notices and dividends to be sent to him. This will be copied from the transfer itself, and the purchaser should, therefore, be careful to see that he is properly described in the transfer. A new certificate of the shares will also be made out and forwarded, in due course, to the purchaser. All companies charge a small fee for registering a transfer, and this has to be paid by the purchaser when the transfer is sent in to be registered.

We have hitherto considered a direct transfer made upon a bargain between two individuals. But sales and purchases of shares are more commonly made through the medium of the Stock Exchange; and the transaction is then a little more complicated. If a holder of 100 shares in some company instructs a broker to sell them, the broker will go into the market and apply to a jobber or dealer, as has been described in a former chapter, and make a contract with him for the sale of the 100 shares at a price agreed upon, upon the terms that the transfer of the shares is to be delivered, and the price paid, upon the next available settling-day; two days in each month being appointed as settling-days, one in the middle and one near the end.

The broker and dealer ordinarily make their contract by word of mouth, writing not being required by law for a contract to sell shares, but each jots down the particulars of the contract for his own purposes; and the broker forthwith makes out a document called a "contract note," and sends it to his client, that being the name applied to the person who employs him. This document gives the name of the dealer with whom the contract is made, and the day for settlement, specifies the number of shares and the price and the broker's commission, and shows the ultimate amount of money which the vendor of the shares will receive.

The dealer will, of course, try to find some one else who is purchasing the same shares, the purchase being made at a slightly higher price, the difference being the dealer's profit. He will inquire for this among other dealers of the same class of shares, and will probably find a purchaser or purchasers in the proper time. A few days before each settling-day there is a day called the "name-day," on which day every dealer who has contracted to buy any shares, is bound to give the vendor's broker the name or names into which the shares are to be transferred. The dealer may have found one purchaser for 60 shares, another for 30, and another for 10, and separate transfers will be required accordingly. It happens that the form of transfer which was given in the first Joint-Stock Companies Act was not well adapted to this practice; but it is, nevertheless, employed by all companies, and it sometimes causes a difficulty. For the law requires the price given by the ultimate purchaser to be stated in the transfer, and the stamp-duty of 10s. per £100 to be paid upon it. But it ordinarily happens that the price received by the vendor is a little less than that paid by the purchaser, and the vendor may object to signing a document in which he is expressed to receive a greater sum than he really receives, especially if he is a trustee of the shares, and is accountable to other persons for their price. He need not be afraid, however, for the practice with regard to sales of shares is well known, and it is not the transfer, but the contract-note, which shows the sum payable to him.

When the dealer has passed the name of the purchaser, or the names of the purchasers, to the vendor's broker, the latter prepares the transfers, sends them to his clients for execution, and attends on the settling-day with the transfers executed, to hand them over in exchange for the price. When he receives that, he deducts his commission, and sends a cheque for the balance to his client.

The dealer, on receiving the transfers, hands them to the various brokers employed by the respective purchasers, receiving

from each the sum payable in respect of the shares purchased through him, and leaves these brokers to do the rest.

We will now consider the position of an investor with money in his hands, who instructs a broker to buy shares in a company for him. The broker will go into the market and inquire of the jobbers who deal in the shares which are required; and, if he is asking for shares in some large company of which there are always shares in the market, or some company in which the jobber happens to hold shares, the procedure will be simple. The jobber will name his prices, the broker will say that he is purchasing, and name the number of shares, and the bargain will be struck; and then the broker will send to his client a contract-note, specifying the jobber's name, the number of shares agreed to be purchased, the price per share, the total price, the broker's commission, the stamp-duty, and the transfer fee; and showing the total sum which the purchaser will have to pay. On or before the following name-day, the broker will give to the jobber the name and address of the purchaser to be inserted in the transfer or transfers, and the jobber will prepare and execute the transfer if he happens to hold the shares himself, or pass on the name to the broker or brokers of the parties from whom he obtains them. The investor will have to send the sum named in the contract-note to his broker before the settling-day, and on that day the broker will pay the price to the jobber in exchange for the transfer and the old certificates, and will then send them in to the company and procure the registration of the transfer. If the jobber procures the shares in batches from several parties, there will be a separate fee on each transfer, and it will generally happen that there will be a rather larger sum payable for the stamp-duty than on a single transfer, the duty being sixpence per £5 up to £25, then half a crown per £25 up to £300, and a crown per £50 for larger sums. Thus a transfer in consideration of £310 bears a stamp of 7 crowns, and five such transfers would bear stamps amounting to 35 crowns, while a single transfer for £1550 would only

involve a duty of 31 crowns. The operation of dividing a purchase in this way is known by the name of "splitting the ticket," and the extra cost caused by it is borne by the jobber who had originally contracted to supply the full number of shares at the price named. It is not, however, obligatory on the jobber to apportion the purchase-money rateably over the various batches of shares. There is an express enactment that, in such cases, the consideration may be apportioned in such manner as the parties think fit (Stamp Act, 1891, s. 58). The result is, that the operation of splitting the ticket may be performed without any great increase of the stamp-duty, or even with no increase at all. If £1550 were divided into four sets of £300 each and one of £350, the duty would be no greater than on a single transfer for £1550.

We may add that, if an investor directs a broker to purchase shares in a company whose shares are not always procurable in the market, any dealer would wish to inquire whether the shares were procurable before naming a price for them. Otherwise, he might find himself unable to fulfil his contract to furnish the shares. Any shares can be sold at any time, but they cannot always be bought.

In the foregoing description of a purchase of shares, it will be observed that the transaction differs in one material point from a purchase of stock in funds; the purchaser's signature is required to the transfer, which was not the case with the funds. In many cases, there is a liability attached to shares, as explained in the early part of this chapter; a shareholder may be called upon to pay up any capital remaining unpaid in respect of his shares. If the transfer did not bear the purchaser's signature, it would be easy for him to deny that he had assented to becoming the holder of the shares. The signature of the transferee is, therefore, clearly necessary in the case of shares with a liability attached to them, and that being so, it is required in all cases. The fact that signature by the purchaser is not required in the case of stock in the funds, is inconvenient in some cases. If a body of trustees

instruct a solicitor to purchase stock in the funds in their names, and send him a cheque for that purpose, the only evidence available to show that their instructions have been carried out, is the stock-receipt. Each trustee is then placed in the awkward position of having either (1) to ask for an inspection of the stock-receipt and risk insulting the solicitor by seeming to suspect his honesty, or (2) to risk becoming liable for the money if it should happen that the solicitor has embezzled it.

The word "transfer" is used specifically to indicate the alienation of property by the method, which has just been described, namely, taking stock or shares out of the name of one person in a register and inscribing them in the name of another. Strictly speaking, it would be most correct to say that shares in companies "pass," or are "alienable" by transfer; bank-notes pass, or are alienable, by delivery; bills payable to order pass, or are alienable by delivery and endorsement. But the words "transfer," "transferable," and "to transfer" are also used generally as equivalent to alienation, alienable, to alienate; indeed, the last-mentioned words are seldom employed in popular language or literature.

The dividends or interest on all shares, stock, and registered debentures are always sent by post to the holders of the same at their registered addresses, that is to say, at their addresses as they appear in the register. We have already pointed out that a purchaser of shares should take care that his proper address should appear in the transfer to him, as that address will be entered in the register. A shareholder can, of course, procure an alteration of his address from time to time.

The expression employed above, that the dividends or interest are sent by post, means, that a document called a "dividend-warrant" is so sent. This is, in fact, a cheque upon the company's bankers for the amount of the dividend, payable to the order of the shareholder. It generally bears on its face a space for the shareholder's signature, and the shareholder's signature in that space is equivalent to endorsement of the

cheque. The shareholder can, therefore, sign it or endorse it, and transmit it to his own bankers, and direct them to place the proceeds of it to his account.

Each dividend is declared or announced a short time before it is actually paid, and it is declared to be payable to the persons who are the registered shareholders on a certain date. The dividend-warrants are made out accordingly, and sent to the persons who are on the register at that date. If any transfer is registered between the date named and the actual payment of the dividend, the transferee does not acquire any right to receive that dividend from the company. When a share is sold without any right to the dividend about to be paid, it is said to be sold "ex dividend"—rather questionable Latin certainly—and the letters "xd" are often placed against shares in lists to show that the price named is that of the share without the dividend. Conversely the expression "cum dividend" implies that the price includes the accruing dividend. Sometimes a share is sold cum dividend, but the transfer is not registered in time for the transferee to receive the dividend direct from the company. In such a case, the transferor will be bound to pay the amount of it to the transferee when he receives it, or simply to sign or endorse the dividend-warrant and send it to the transferee.

NOTE.—It will be seen that the words jobber and dealer are two names for the same class of persons.

CHAPTER XI.

COLONIAL AND OTHER BONDS.

MANY of our colonies, and many foreign nations also, and many municipal corporations, both at home and abroad, have borrowed money in this country, undertaking to pay interest upon it at a certain rate until they repay the capital. Various conditions have been annexed to such loans, sometimes ensuring that the capital shall not be repaid before a certain rate, and sometimes providing that a sum of money shall be set apart every year for reducing the loan, and that a certain part of the loan shall be paid off every year. This is effected in the following manner. The original loan is secured by a large number of bonds, usually of £100 a-piece, each bearing a numero. Then, every year the required number of the numeros is drawn by lot, the numeros drawn are announced in certain specified newspapers, and the bonds bearing those numeros are paid off.

The bonds are generally framed in the form of promissory notes promising to pay the sum of £100 at a certain date, and to pay interest upon it half yearly at a certain rate, until the capital is repaid. They are generally issued as bonds payable to bearer. At the foot of each bond are a number of little printed squares called "coupons." Each coupon is a sort of cheque or promissory note for a half year's interest, the date being printed upon it; those earliest in date are printed at the very foot of the bond, with coupons for later dates in order above them. Then, as each half-yearly instalment of interest becomes due, the coupon for it is cut off from the bottom of

the bond and presented for payment. The document itself states where it will be cashed, the place being generally some London bank which acts as agent for the borrower. All bankers are accustomed to take care of bonds of this nature for their customers, and to cut off the coupons from time to time and cash them, and place the proceeds to their customers' accounts.

There is no stamp-duty payable on the sale of any document payable to bearer, issued in the United Kingdom and duly stamped, whether it be a common bill or note, or a colonial, municipal, or foreign bond; but a stamp-duty is imposed on all such documents at the time of their issue (Stamp Act, 1891, Sched. Marketable Security; *Baring v. Commissioners of Inland Revenue*, 1898, 1 Q. B. 78, aff. in *H. L. W. N.*, 1898, p. 72).

It is clear, however, that there is greater security in an investment passing by transfer, where the holder has his name inscribed in a register, than in a bond, which may be misappropriated by a fraudulent agent, or stolen by a thief and sold to an innocent purchaser. Many colonies have accordingly instituted registers of their creditors, some at the office of the Crown agents for the colonies, some at the Bank of England, and some at other banks. These registered colonial securities are sometimes spoken of as "registered and inscribed bonds," and sometimes as "colonial stock"; one effect of converting bonds into registered securities was that a transfer signed by the registered holder became necessary for an alienation, and such a transfer was subject to the *ad valorem* stamp-duty of 10s. per £100 as already mentioned. This tax operated to deter colonies from adopting the practice of opening registers; but, at the same time, it was felt to be desirable to encourage them to do so, inasmuch as many trustees had power to invest in colonial securities, and registered securities are much more suitable for a body of trustees than bonds which pass by delivery. Accordingly, the Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), was passed, providing that the government of

any colony might notify to the proper officials at Somerset House the institution of any register, and that thereupon the stamp-duty upon any transfer of the stock should be 2s. 6d. for each nominal £100 of the stock. The Act added that a transfer on the appointment of a new trustee should never be more than 10s., but made no express mention of the duty on a transfer to original trustees on the execution of a settlement. It authorized the colonial government, however, to compound at once for all stamp-duties in respect of any registered stock.

These provisions of the Colonial Stock Act, 1877, have been repeated in the Stamp Act, 1891, with a slight modification of the terms on which a composition may be effected (Stamp Act, 1891, s. 114). The 115th section of the Stamp Act, 1891, also contains provisions whereby any county council, corporation, or company may compound with the Government for the stamp-duty payable on transfers of its stock; and the 39th section of the Finance Act, 1894, extends this provision to the stock of any foreign state or government which is inscribed in the books of the Bank of England.

There does not appear to be any official catalogue available to the public, stating what colonies, foreign states, county councils, corporations, and companies have availed themselves of the privilege of compounding for the stamp-duties on transfers of their registered securities. Moreover, when a composition is effected under section 115 of the Stamp Act, 1891, or section 39 of the Finance Act, 1894, the county council, corporation, company, or foreign government is authorised to impose a charge upon each transfer equivalent to the duty which would have been payable, if no composition had been effected. The members of the Stock Exchange, however, publish monthly lists of investments, showing which corporation and county stocks of the United Kingdom are subject to stamp-duty, and which are exempt; and it is probable that this information will be extended to other classes of investments in future issues of the brokers' monthly investment list. At present, such information can only be obtained in any particular

case by inquiry of members of the Stock Exchange, or at the office where the register in question is kept.

It is a curious fact, however, that a transfer of stock of the Bank of England itself is subject to a fixed stamp-duty of 7s. 9d., however great or small the amount may be (Stamp Act, 1891, Sched. Conveyance). The capital of the Bank of England is divided into stock, not shares.

CHAPTER XII.

EQUITABLE INTERESTS.

IT not infrequently happens that a testator leaves property to trustees, upon trust to hold it during the life of his wife, possibly with some power of varying the mode of investment, and pay the income to his wife for life, and after her death divide the property amongst his children. In this case, the wife would be said to take an equitable interest for her life in the property; and the children would be said to take equitable reversionary interests in it. We will suppose that the trustees of the property are not identical with the testator's executors, and that the executors transfer to the trustees all stock, shares, and the like included in the bequest, and hand to them all bonds, endorsed if necessary, so that the trustees become to all appearance the absolute legal owners of the property. In such a case, if a change of investment were desired, the trustees might consult the wife and children and procure their consent, but on selling any property they would say nothing about the trust to the purchaser; they would sell, probably through the Stock Exchange, just as if the property were their own, and the purchaser would not know that it was trust property at all.

The wife and children could do nothing in the way of selling the actual property, but they could sell their interests in the property. These interests are called "equitable" or "beneficial" interests. It not infrequently happens that a child wishes to sell his reversionary interest. All that the law

requires for the alienation of such an interest, is writing signed by the party selling, whereby the vendor expresses to assign his interest to the purchaser, and, in the case of a sale, the document must bear a stamp at the rate of 10s. per £100 of the purchase-money. Such an equitable interest is said to "pass by assignment." But, it may be asked, how can a purchaser of such an interest know that the vendor has not previously sold it to somebody else. The law goes some way towards preventing a fraud of this nature by holding that, in the case of several assignments of an equitable interest, the assignee who first gives notice of his purchase to the trustees of the property gains priority over the others (*Stephens v. Green*, 1895, 2 Ch. 148). It is therefore customary, and indeed necessary for safety, that the assignee of an equitable interest should at once give notice to the trustees of the property that the interest has been assigned to him. It is evident that, if he did not give this notice, the trustees might hand the property to the party originally entitled, knowing nothing of the assignment.

The first purchaser of an equitable interest, therefore, gets a good title to the property, if he at once gives notice to the trustees. But a party proposing to purchase cannot be certain that he is the first purchaser, unless prior to his purchase he inquires of the trustees and ascertains from them that they have not had notice of any prior assignment. It is necessary, therefore, for a proposed purchaser to make these inquiries before paying the purchase-money; but it has been held that trustees are not bound to answer any such inquiries, and it has also been held that, if a trustee answers incorrectly through forgetfulness, he is under no liability for any loss which may thereby be caused to the inquiring party (*Low v. Bouverie*, 1891, 3 Ch. 82). It is also necessary to inquire of all the trustees, as notice to any one would affect the property (*Ward v. Duncombe*, 1893, A. C. 369).

An equitable interest is evidently an unsatisfactory sort of property to purchase or to lend money on, unless all the parties

are friendly, and the trustees are willing to communicate all that they know.

Although the law only requires that the assignment of an equitable interest shall be made in writing signed by the assignor, in practice, a deed is nearly always employed for the purpose.

We ought perhaps to add that the word "testator," which was used in the first sentence of this chapter, means a man who has made a will. A woman, who has made a will is, in like manner, called a testatrix. A person, who dies without leaving any will, is called "an intestate," and is said to "die intestate."

CHAPTER XIII.

COPYHOLD LAND.

A GREAT part of the country is divided into manors. A manor now is little more than a name, and the lord of a manor now is a lord only in name. But in days gone by, the lord of a manor was the governor of a little district, and held courts at which all the landholders attended; and many traces still exist of the old manorial system. In most manors there was some land which the lord let to small tenants on the terms of their performing menial services for him. A list of the cottages and fields so let was kept by an agent of the lord, called the "steward of the manor," and was entered in a book called the "Court Roll of the manor." The entry in the Court Roll in each case described the lands, gave the name of the tenant, and certified that he had been admitted to hold the lands. A copy of this entry was made and handed to the tenant; and the land was said to be held by copy of Court Roll, and was called "copyhold land." The terms on which copyhold lands were held varied in different manors, and vary to this day. In general, the lord of the manor is entitled to any minerals under copyhold lands, and to any timber trees which grow in them. Oak, ash, and elm trees being more than twenty years old, are considered to be timber trees everywhere; and in some parts of the country some other trees are reckoned timber also, such as beech and hornbeam. In most manors, the custom came to prevail that the copyhold tenant was entitled to the land in perpetuity, subject to certain defined rights on the part of the lord. A copyhold tenant may sell his land, or devise it by

will ; and if he dies intestate, his customary heir is entitled to it, subject in each case to the rights of the lord.

The lord's rights include the right to receive a sum of money, called a "fine," on any alienation of the land, the fine being payable by the purchaser on a sale, and by the heir or devisee on the death of a tenant. The heir or devisee is bound to come and pay the fine and be admitted, that is to say, to have his name entered in the Court Rolls. If he omits to do this, the lord may take possession of the lands until he appears; this is called a "seizure quousque." The amount of the fine, however, differs in different manors, and often varies in different cases within the same manor ; sometimes it is merely nominal, at other times it may amount to twice the full annual value of the lands. Sometimes a copyhold tenant is bound to pay the lord a small annual sum, such as a shilling. This is called a "quit-rent," and appears to be a commutation of menial services which the tenant of the land was anciently bound to perform. Sometimes when a copyholder dies, the lord becomes entitled to his best horse : this is called a "heriot." In addition to the rights of the lord, the steward of the manor becomes entitled to certain fees on every dealing with copyhold land.

We may observe here that the word "land" is ordinarily used to include buildings, and, indeed, everything permanently attached to land ; and that the word "tenant" literally means holder, and is applied to every one who holds land, except the king or queen ; and the word "tenement" means a thing held, and is used to denote any land held by a tenant. The lord of a manor ordinarily held the manor of the Crown upon the terms of doing certain services ; and then granted out portions of his land to copyholders. The lord was a tenant of the Crown and the copyholders were tenants of the lord. This theory still prevails. Many copyholders again let their tenements to others for occupation, and so become landlords in their turn. Indeed, it is the copyholder who would ordinarily be designated the landlord in the case of copyhold land. The tenant who is actually in occupation of land is sometimes called

the "terre-tenant," to distinguish him from other tenants who do not actually occupy the land.

Let us next consider the mode in which copyholds may be alienated. In ancient times, it was generally the custom of every manor that two Customary Courts should be held in each year at the steward's office within the manor, one soon after Easter and one late in the autumn. This custom is still kept up in theory, but the courts are not very numerous attended; we fancy that very often no one is present except the steward and his clerk, but that would still be deemed a court (see 4 & 5 Vict. c. 35, s. 86; and the Copyhold Act, 1894, s. 82). Stewards of manors are now nearly always solicitors. Formerly, if a copyholder wished to sell his land, he attended at a court and stated to the steward that he wished to surrender his land to the use of the purchaser, and handed to the steward a rod as an emblem of the land. The steward then made an entry in the Court Roll to the effect that the copyholder had so surrendered his land, and took care that the entry showed distinctly who had made the surrender, what was the precise land surrendered, and to whose use the surrender was made. When this entry was completed, the purchaser came forward and applied to be admitted accordingly as copyhold tenant of the land surrendered to his use. The surrenderor, of course, identified the applicant as being the right surrenderee, and the latter paid to the steward the fine and fees payable on admittance to the tenement in question, and the steward thereupon admitted him to be tenant thereof, and handed him the rod, and made an entry of his admittance in the Court Roll. The steward further made a copy of the entries of the surrender and admittance, signed it, and handed it to the purchaser.

This method of alienating copyholds may still be employed, but provision is made for ensuring the payment of the stamp-duty which is imposed on alienations of land. This duty is at the rate of 10s. per £100 on sales of land, 2s. 6d. per £100 on mortgages of land, and in most other cases a simple sum of 10s.

Before any admittance or surrender is made, the parties are bound to deliver a written statement to the steward, showing what stamp-duty is payable; and the steward is bound to make out within four months a duly stamped copy of the entry in the Court Roll, and may require payment of the duty as well as of his fees, before he makes any entry in the Court Roll at all. The steward ought also to write in the margin of the Court Roll a certificate of the stamping of the copy of the entry, as evidence of the payment of the duty (Stamp Act, 1891, ss. 65-68).

Other modifications in the mode of alienating copyholds have been introduced; and, in particular, surrenders of and admittances to copyholds may now be effected at any time and place, and not only at the Customary Courts (4 & 5 Vict. c 35, s. 87; and the Copyhold Act, 1894, s. 83). Such surrenders and admittances are said to take place out of court, and may be made in the presence of the steward, but possibly without the Court Roll being at hand. In the case of such a surrender or admittance a memorandum of it is drawn up and duly stamped, and then signed by the steward, who is forbidden to make any admittance out of court, except under a duly stamped document (Stamp Act, 1891, s. 66). The memorandum, being duly stamped, is subsequently copied into the Court Rolls. In dealings out of court, the memoranda are the original documents, and the entries in the Court Roll are copies; in dealings in court, the entries in the Court Roll are the originals, of which copies are made afterwards. In practice, in both cases, the necessary documents are prepared by the steward in the order most convenient under the circumstances.

Furthermore, surrenders and admittances may be effected by a deputy-steward, and may be made by the agents of the parties interested, without any necessity for the parties to attend personally.

It will be observed that in the alienation of copyholds there is no need for either the vendor or purchaser to sign any document, but the steward signs the material document in the

presence of the parties or their agents. But, practically, on a sale of copyholds or of any land, there is first an agreement to sell at a future date, signed by both parties and accompanied with the payment by the purchaser of 10 per cent. on the purchase-money by way of a deposit. The purchaser then makes inquiries respecting the property and its title, and the documents necessary for actually conveying the property to the purchaser are prepared. Then, on the day named in the agreement, the purchaser pays the rest of the purchase-money, and the documents are duly executed, and the sale is completed, the purchaser being made the legal owner of the property. Sometimes there are difficulties in the way of actually carrying out the surrender and admittance on the day named for completion of a sale of copyholds; and it is found more convenient for the vendor to execute a deed whereby he covenants that he will forthwith surrender the copyholds to the use of the purchaser, and hold them on trust for the purchaser until the surrender and admittance are effected. In any case, the actual surrender and admittance are often carried out by the solicitors, or clerks of the solicitors of the vendor and purchaser, on behalf of the parties themselves.

More will be said concerning a sale of copyholds and the title to them, after the mode of alienation of freehold and leasehold lands has been explained. But we may add here, that copyholds may be converted into freeholds by a conveyance of the lord's interest to the copyhold tenant. This is called "enfranchising" them, and every copyholder may require an enfranchisement of his copyhold tenements on the terms of paying the lord the cash value of the lord's interest, and means are provided for assessing that value in case of dispute.

CHAPTER XIV.

FREEHOLD LAND.

ALL the land in the country which is not copyhold is freehold. When leaseholds are spoken of, it means that the lands mentioned are subject to a lease for a term of years; but the lands subject to the lease must be themselves either copyhold or freehold. We do not often find long leases of copyhold lands, but long leases of freehold lands are very common.

According to the theory of the law, all the land in the country originally belonged to the Crown, and was granted out by the Crown in large or small holdings, to be held of the Crown on the terms of the tenant performing certain services. The service generally required was that of turning out to serve the king, when required, with a certain number of followers. A baron who held land on such terms was, of course, obliged in his turn to grant out portions to lower vassals, on the terms of their turning out to serve under him, when he received the royal summons. This was called "subinfeudation." In the course of some two centuries after the Norman conquest, a custom came to prevail for the landholders to make a money payment called "escuage" or "scutage," instead of serving personally. Subinfeudation was then stopped, and every landholder became empowered to sell his land, but so that the purchaser should hold it of the same lord and on the same terms as the vendor (Stat. 18 Edw. I. c. 1, called the Statute of Quia Emptores, A.D. 1290). Land, however, still remained subject to many burdensome feudal incidents until the Commonwealth; and, when the restoration of Charles II. came, it

was felt to be impossible to reimpose the old feudal rights of the Crown, and an Act of Parliament was accordingly passed, wiping away nearly all that was left of the feudal system (Stat. 12 Car. II. c. 24, A.D. 1660). Since the last-mentioned date, freeholders have been practically absolute owners of their lands; and, as the rights of any lords intermediate between the landholder and the Crown have been reduced to a mere chance of succeeding to the land if the landholder died intestate and without any known heir, the existence of any such lords has in general been forgotten, and nearly all the freehold lands in the country are considered as held direct from the Crown. In some places, however, there has been some rent payable to the lord, or some right of common enjoyed by his tenants, which has preserved evidence of some freeholders holding their land of him, so that intermediate lords are still occasionally found. They are called, in legal language, "mesne lords."

The original method by which freehold land could be alienated from one person to another was by means of a ceremony called a "feoffment." The parties repaired to some spot upon the land, choosing the front door of a house if there was one upon the land, and called together a number of the neighbours. Then the vendor stated in words that he granted to the purchaser the lands in question, describing them as accurately as he could, and handed to the purchaser the key of the house, or a sod, as an emblem of the lands. The purchaser thereupon proceeded to enter the house, or step upon the land, by way of taking possession, and, after shutting the door to indicate his right to exclude others, he reopened it and reappeared as the owner in actual possession. The neighbours who were present, could thus be called as witnesses on any future occasion. It was, however, soon found inconvenient to leave the evidence of such a transaction to depend solely on the memory of a few of the neighbours; and the custom arose of making out a written statement of the act performed, called a "charter of feoffment." The law adopted

this custom, and rendered any feoffment ineffectual unless expressed in writing signed by the party making the feoffment (Statute of Frauds, 29 Car. II. c. 3, s. 1); and now the further requirement of sealing has been imposed, so that a feoffment is void unless evidenced by deed (Real Property Amendment Act, 1845, 8 & 9 Vict. c. 106, s. 3). And inasmuch as freehold land may now be alienated by deed alone, without any feoffment, it has naturally come to pass that feoffments have fallen into disuse (Real Property Amendment Act, 1845, s. 2). A ceremony, however, resembling an ancient feoffment may still be witnessed when a rector or vicar, freshly appointed to a living, comes to enter into possession of it. The bishop's deputy hands him the key of the church, and he enters the church, closes the door and rings a bell, and then reopens the door and admits the bystanders. This ceremony is called the "induction" of the new parson.

To return to freehold land, the ordinary method of alienating it from one person to another, is that the conveying party executes a deed, drawn in legal language, whereby he is expressed to grant the land to the alienee. The deed is signed, sealed, and delivered by the conveying party, and attested by a witness. It, of course, contains an accurate description of the property conveyed, either in words or by means of a plan, or by both methods. Sometimes the particulars of the property conveyed are given in a list at the end of the deed, stating the names of the fields or houses, the names of the tenants, with the rent and acreage of each, and other like matters. Such an appendix to a deed is called a "schedule."

NOTE.—The word "convey" is used amongst lawyers as the technical word for alienating property from one person to another by written documents. The words "conveyancing" and "conveyancer" are used for the art of preparing such documents, and the barrister who practises it.

CHAPTER XV.

LEASEHOLDS.

LAND may be let by word of mouth for any term not exceeding three years, at least if it is let at a rent which is its full value. Such a rent is called a "rack-rent."

A deed is required for a lease of lands which is to endure for a longer period than three years. The words "lessor" and "lessee" are used to designate the landlord and tenant respectively, when a lease is granted, and the technical word used in a lease, is that the lessor "demises" the land to the lessee.

Houses are frequently let for 21 years, with power for the tenant to "determine," that is to say to terminate, or put an end to, the lease at the end of the seventh or fourteenth year. These are called "occupation leases," and often contain a clause whereby the tenant is forbidden to alienate his interest to any other person without the landlord's consent. In such leases also, the tenant often covenants to do all necessary repairs. In the last-mentioned case the lease is called a "repairing lease."

Building-leases are a more important matter. They nearly always arise under building agreements. First, an agreement is made between a landowner and a builder, whereby the landowner agrees to put the builder in possession of certain land, and the builder agrees to build certain houses upon it; and the landowner agrees that if and when the houses are properly built, he will grant the builder leases of them for a long term of years, such as 99 years, at a specified rent. The

rent, of course, represents the value of the ground without the buildings, and is consequently called a "ground-rent." Then, when the builder has duly built the houses, the specified leases are granted to him. It would obviously be out of place for the lessor to stipulate that the builder should not sell his interest without the lessor's consent, and no such stipulation is ever inserted. The lessee's interest under a building-lease is always freely alienable.

Sometimes a building agreement comprises a parcel of land of considerable size, and stipulates for a certain aggregate rent, say of £50, but allows the builder the option of distributing the rent over the various houses to be built, merely stipulating that no house shall bear a greater rent than a named sum, say £10. Then, if the builder completes five houses, and takes leases of them at £10 each, the whole ground-rent will be provided; and if there is still enough land left to build any more houses, he will be entitled to leases of them rent free. In such a case it is common to grant leases of the remaining houses, by which it is expressed that a rent is to be paid of one peppercorn per year, payable if demanded. This custom is of very ancient date, and the result is that land held rent free, is commonly spoken of as being held at a peppercorn rent. Of course, under such a lease no one ever thinks of demanding the peppercorn.

Another course is sometimes pursued under building agreements when the full rent has been provided, and there is further land to be leased: namely, that substantial ground-rents are reserved by the further leases, and the lessor pays the lessee a capital sum as a purchase of such rents during the term of the leases. About twenty times the amount of one year's rent would now ordinarily be paid to the lessee under such circumstances: this is called giving twenty year's purchase. If property bringing in £10 a year is sold for £200, it is said to fetch twenty year's purchase; if for £240, twenty-four year's purchase; if for £280, twenty-eight year's purchase, and so on.

In general, the rent stipulated in the building agreement

represents the fair annual value of the ground unbuilt upon, the true ground-rent in fact; and when buildings have been erected and leased at rents amounting together to more than the rent named in the agreement, and the lessor has purchased from the lessee the right to receive such extra rent, the rents reserved by the leases are called "improved ground-rents." They represent the value of the ground, plus such an annuity for the term of the lease as could be purchased with the money paid by the lessor.

When a builder has secured the rent reserved by a building agreement as above described, and has still some land left, he may pursue a third course: he may take a lease of the remaining land at a peppercorn rent, and under-let it to another builder at a substantial rent. Then, when the second builder has built houses and taken leases of them at the agreed rents, these rents would be called "leasehold ground-rents." They represent the value of the ground, but the party who receives them is only entitled thereto for the term of years for which he holds the land. The last-mentioned party is sometimes called a middleman; his lease is also called the "superior lease," and the lease granted by him to the builder of the houses is called an "under-lease." This state of affairs is often found. It is true that a building agreement always contains a clause forbidding the builder to under-let any of the land unleased without the lessor's consent; but it is generally found to be to the interest of the lessor to consent to an arrangement with a second builder to build upon part of the land. Hence, we often find land subject to a long lease at a small rent, and then under-let for the original term, all but a day or so, at a larger rent, and finally let at rack-rent by an occupation lease.

We see here a tolerably complicated series of interests affecting a plot of land: first the freehold, secondly the leasehold interest under the first builder's lease, thirdly the leasehold interest under the second builder's under-lease, fourthly the interest of the occupying tenant under the occupation lease. The occupier would pay the rack-rent to the second builder,

the second builder would pay the leasehold ground-rent to the first builder, and the first builder would pay the freehold ground-rent to the freeholder. We shall, moreover, see hereafter that each of these stages may be further complicated by both mortgages and settlements.

The mode of alienating a leasehold interest resembles that of a freehold; that is to say, a deed is required whereby the alienor is expressed to assign the property to the alienee to be held for the residue of the term created by the original lease, subject to payment of the rent thereby reserved, and to performance of the lessee's covenants therein contained. The word "assign" is regularly used in the alienation of leaseholds, the word "grant" in the case of freeholds, and the word "convey" in both cases. The word "convey" is also used for all modes of alienation. The word "grant" was formerly used in feoffments and is not now ordinarily used in deeds except in conveying freeholds, yet it is common to speak of granting a lease, and a lord of a manor is said to grant land to be held by copy of Court Roll. The word "assign" is used in any documents, whether under seal or not, whereby one person is expressed to make over property to another.

Whenever a lease is granted, or an agreement for letting land is entered into, two copies of it are made: one, which is called the "lease" or "agreement," is executed by the lessor and bears the stamp, for a stamp-duty is imposed on all leases and agreements for letting, and this document is handed to the lessee to be kept by him. The other copy is executed by the lessee and handed to the lessor. This is called the "counterpart" lease or agreement. If the stamp on the lease does not exceed 5s. the counterpart bears the same stamp as the lease; but if it exceeds 5s. the counterpart bears only a 5s. stamp.

NOTE.—The expression "occupation lease" would include any lease framed with the intention that the lessee should actually occupy the property.

CHAPTER XVI.

SALES OF LAND.

SALES of land are effected either by public auction or private treaty. We will speak of the former first. When a landowner wishes to sell land by public auction, he employs an auctioneer, who advertises the fact, giving a short description of the property and the date and place of the sale, and mentioning where a printed copy of the particulars may be obtained. The particulars are regularly procurable, both from the auctioneer and the vendor's solicitor; for a solicitor's aid is always required to effect a sale of land. Any intending purchaser can then apply at the office of the auctioneer or solicitor, and procure a copy of the particulars. This document is frequently accompanied by a plan of the property, and gives a detailed description of it, and mentions any tenancy which affects it; and, when an estate is sold in lots, which is frequently the case, it distinguishes the separate lots. The particulars are regularly accompanied by the conditions of sale, which state the time and place at which the sale is to be completed, and fix the time allowed for the various steps intermediate between the contract and completion, which are about to be described. The conditions are always prepared by the vendor's solicitor, and very often by a barrister also, on his behalf. When they are prepared by a barrister, they are said to be "settled by counsel," counsel being another name for a barrister.

When the day of the auction arrives, the property is offered by the auctioneer and knocked down to the highest

bidder, who thereupon signs a contract to purchase the property according to the conditions, and pays a deposit. A form of the contract to be signed by the purchaser is printed at the end of the conditions, and the conditions stipulate that the purchaser shall pay a deposit; and the custom is very generally adopted of making the deposit 10 per cent. on the amount of the purchase-money. The auctioneer at the same time hands to the purchaser a copy of the particulars, on which he signs a receipt for the deposit and a clause in which, on behalf of the vendor, he confirms the sale to the purchaser.

The purchaser at the same time states in writing to whom he wishes the abstract to be sent.

The abstract is a written summary of all deeds and other documents relating to the property during recent years.

If the conditions are silent as to the date at which the abstract is to commence, the vendor is bound to deliver an abstract showing the title to the property for forty years prior to the sale. But it is open to the vendor to stipulate by the conditions that the purchaser shall accept a shorter title; and, in particular, if the property has been sold for full value within the period of forty years, the vendor may very reasonably stipulate that the abstract shall commence with the deed by which it was conveyed on such sale.

The purchaser ordinarily names his own solicitor as the person to whom the abstract is to be delivered; and, on receipt of the abstract, that solicitor proceeds to peruse it and consider whether, on the face of it, it shows that the vendor has a good title to the property. He frequently lays it before counsel to advise on the title. Besides considering the sufficiency of the abstract, it is also necessary to get the vendor to verify it; that is to say, to produce all the documents, of which summaries are given in the abstract. This involves the purchaser's solicitor in rather tedious work, as it becomes necessary for him to read all the original documents and ascertain that all the material contents of them are stated in the abstract. If the vendor cannot produce the original deeds he cannot make

a good title to the land (*Halifax Commercial Banking Co. and Wood*, W. N. 1898, 62.)

When the abstract has been verified and perused, the purchaser's solicitor, often under the advice of counsel, draws a set of requisitions on the title and hands them to the vendor's solicitor. The conditions of sale always limit a time for the delivery of requisitions, generally a fortnight or thereabouts, and stipulate that the purchaser shall not make any fresh requisitions after that date. Time is said to be "of the essence of the contract" in this respect; that is to say, it is essential, and no further requisition whatever can be made after the period has expired. In due course, the vendor's solicitor sends answers to the requisitions, and further correspondence and interviews ensue until all the requisitions are disposed of. If some requisition is made, on which neither party will give way, a simple procedure exists whereby it can be brought before a judge and decided. When all requisitions are satisfied the title is said to be accepted, and the purchaser's solicitor prepares a draft-conveyance of the property from the vendor to the purchaser, and sends it to the vendor's solicitor for approval. In due course it is returned approved, and again if any dispute arises, it can be readily brought before a judge for decision. The draft-conveyance being settled, the purchaser has it engrossed; that is to say, written out carefully on parchment in the way in which deeds are usually written, and the purchaser also gets the proper stamp impressed upon the parchment at Somerset House. The costs of the conveyance fall entirely on the purchaser. The engrossment, as it is called, is then left with the vendor's solicitor, who gets it executed by the vendor; and then the purchaser attends at the place named in the conditions, usually the office of the vendor's solicitor, pays the balance of the purchase-money, after allowing for the deposit, and receives the conveyance duly executed by the vendor. Sometimes the vendor attends personally to receive the purchase-money, and executes the conveyance at the time of completion; but in other cases he

leaves the executed deed in the hands of his solicitor, to be delivered to the purchaser on payment of the money. The deed always contains a receipt for the money by the vendor, and the fact that the vendor has executed the deed and placed it in his solicitor's hands, justifies the purchaser in actually paying the money to the solicitor (Conveyancing Act, 1881, s. 56). After the deed has been executed by the vendor and placed in his solicitor's hands it is called an "escrow," until it is actually delivered to the purchaser. If the purchase is not ready for completion by the day named for that purpose in the conditions, a special appointment is made for the completion; and the conditions usually stipulate that, in case of delay, the purchaser shall pay interest on the unpaid portion of the purchase-money, but shall be entitled to the rents and profits of the property as from the day originally named for completion.

Besides the delivery of the conveyance, there are other matters to be attended to on completion. Notices may be required to be signed by the vendor for service on the tenants of the property directing them in future to pay their rents to the purchaser, and notices to insurance companies in which the property is insured against fire. Also the policies of fire-insurance, and the counterparts of the leases or agreements, under which the property is held by the tenants, and the title-deeds of the property itself will have to be handed to the purchaser. The possession of the title-deeds is a very material matter, and should be obtained whenever possible. Sometimes a small portion of a large estate is sold, the whole being held under one title. In such a case the vendor keeps all the deeds which relate to the land retained by him, but gives to the purchaser an undertaking to produce them whenever required, and it is also material that a memorandum of the sale of the plot should be endorsed on, that is written on the back of, the last title-deed.

If the vendor of land has not got the title-deeds in his possession, he cannot make a good title to the land. The

absence of the title-deeds shows that he has borrowed money on security of the property from somebody else, and handed the title-deeds to the lender of the money.

We have hitherto traced the course of working out the contract between the solicitors of the vendor and purchaser, but there are two other steps which it is material for the purchaser to take before he parts with his purchase-money: these are (1) to inquire on the property and (2) to make the usual searches against the vendor.

It is necessary for the purchaser to inquire upon the property in order to see that the vendor, if not in actual occupation of the property, is in legal possession of it, that is to say, in receipt of the rents. It is also necessary for him to inquire, because the law holds that a purchaser of property takes it subject to all rights of the parties in possession. We will explain this by an example. Suppose that the owner of a house, whom we will call A, has let it to B for twenty-one years at £160 a year, with power for B to terminate the tenancy at the end of the seventh year. B gives notice to A to terminate it accordingly at the end of the seventh year, but offers by letter to keep on the house as tenant from year to year upon the other terms of the lease, and A by letter accepts that offer. A then dies, and his executors, knowing nothing of the letters which have passed between him and B, purport to sell the house to C as being subject to B's lease. If B were a person of substance, and the value of property in the neighbourhood were falling, the existence of B's lease would induce C to give a higher price for the house than he would give if he knew that it was only let from year to year. Then, a little time after the purchase, B might give notice to terminate his tenancy at the end of the current year, and B would be entitled to do this. Although C had no actual notice of the agreement made by letters between A and B, he is held in law to have constructive notice of it. For the law requires a purchaser to inquire as to the rights of the parties in possession; and, if he omits to make proper

inquiries, the law holds that he has constructive notice of all things which he would have learnt if he had made proper inquiries.

There is less risk of any oversight or fraud being committed in this way when a sale is made by auction, than when it is made by private treaty. For printed particulars are prepared, as we have seen, of every sale by auction, and a copy of these is nearly always sent to each tenant in occupation and read by him, whereupon, if any error appears, he naturally calls the auctioneer's attention to it.

Some difficulty is often experienced in making inquiries on the property. We showed in a former chapter how land might be let at a freehold ground-rent, underlet at a leasehold ground-rent, and occupied at a rack-rent. If the freehold were sold, the purchaser would find the occupier on the property paying rent to some local agent, who would act for the second leaseholder; and, neither the occupier nor rent-collector would know whether that party made any claim affecting the interest in the property which the purchaser had contracted to purchase. It is difficult to say precisely what a purchaser should then do, but it seems to be clear that he can only buy the property subject to the rights of all recipients of the rent; and he is not absolutely safe unless he inquires of all.

Very few cases have occurred in which property has been sold with a concealment of some right discoverable by inquiry, consequently the law upon the subject has not been very clearly laid down (see *Cavander v. Bulteel*, L. R. 9, Ch. 79, Dec. 1873).

It is clear, however, that when property is let upon lease the purchaser can only buy the property subject to all the rights of the lessee under the lease. In such a case it is customary for a vendor, on offering the property for sale by auction, to announce in the conditions that the counterpart lease may be inspected, by intending purchasers, at the office of the vendor's solicitor during business hours on any day

during the week preceding the sale. It is then impossible for the purchaser to object that the terms of the lease are not properly described in the particulars (see *Caballero v. Henty*, L. R. 9, Ch. 447, March, 1874). The same practice is observed when leasehold property is offered for sale, but in this case it is the lease itself which is offered for inspection. The purchaser then knows beforehand exactly what he is buying.

Besides inquiring on the property, the purchaser ought to make certain searches against the vendor before completing the purchase. This is generally done on the morning of the day on which the purchase is completed. Some other person may have made a claim to the land and brought an action against the vendor to recover possession of it. In such a case, it is open to the claimant to register his claim as a pending action, or in Latin a *lis pendens*, against the defendant in the action. The effect of registering a *lis pendens* is that any person who thereafter purchases land from the defendant, takes it subject to the plaintiff's rights. It is necessary, therefore, for the purchaser to search at the office where a *lis pendens* would be registered. Again, the vendor may have been adjudicated bankrupt, in which case his interest in the property would have vested in his trustee in bankruptcy, to be sold for the benefit of his creditors. The purchaser should search to see if this has been the case (*In re Calcott and Elvin's contract*, W. N. 1898, p. 63). It may be said that the law has been framed upon the principle of requiring everything to be registered which may affect a man's land, and which is not discoverable by examining his title-deeds or inquiring upon the property. The law may not be perfect in this respect, but its intention is good, and it is not often that it proves defective.

We may sum up the matter then by saying that in order to show a title to land the following points must be established: (1) that the party is in legal possession of the land, (2) that he is in possession of the title-deeds, (3) that the title-deeds

show upon the face of them that he has a good title, and (4) that there is nothing registered against him which affects his title.

The above-mentioned points apply generally, but some other points require attention under special circumstances. In Middlesex, Yorkshire, and Bedford Level, there are local registries where all deeds relating to freehold land are required to be registered. Several Acts of Parliament have been passed establishing a general Land Registry at which any landowner may register the title to his land; but very few landowners have availed themselves of the provisions of these Acts. In the year 1897 an Act of Parliament was passed providing for the compulsory registration of the title to land, but enabling any county council to veto the introduction of the system into its district. Under this Act compulsory registration is being introduced in London.

When land is situated in a registration district, the registry should be searched for deeds relating to it. Any person may search in the registries. In the case of copyhold land, the purchaser should apply to the steward of the manor to search the Court Rolls for dealings with the land which he is purchasing. Stewards are doubtless always willing to do this on payment of their usual fees; but, strange to say, it is not clear that the purchaser could demand an inspection of the Court Rolls if it were not accorded willingly (Rule of Supreme Court, 1883, order xxxi. rule 19).

We have hitherto spoken of sales by public auction, but sales by private treaty only differ from them in the first step. No one, who is not a lawyer, should sign an agreement for the purchase of land by private treaty without having the contract approved by his solicitor. When land is offered by auction, the publicity of the sale is a pretty sure guarantee that the conditions are not drawn so as to throw on the purchaser the obligation of taking property with a bad title. But in other cases there is no such safeguard. A contemplating purchaser has sometimes found himself involved in an undesirable bargain

by signing an offer tendered to him by an estate agent, or by a letter inconsiderately written.

On the other hand, when land is sold by private treaty, the purchaser is ordinarily able to make many inquiries before signing the contract which, in the case of an auction, cannot be made until afterwards.

We may here mention that any matter affecting the title of lands is called an "incumbrance." A mortgage, a lease, and a right of way would all be called incumbrances on the lands affected by them.

CHAPTER XVII.

MORTGAGES.

AN owner of land frequently finds it convenient to borrow money upon the security of it. Such a security is called a "mortgage." Indeed, it very commonly happens that a purchaser of property borrows two-thirds or so of the purchase-money on mortgage of the property at the time of the purchase, and by that means pays for the property. The deed for securing the money is prepared at the same time as the purchase-deed, and the transactions are completed together.

Whenever a mortgage is effected, the owner of the land who borrows the money is called the "mortgageor," and the lender of the money is called the "mortgagee."

The ordinary form of a mortgage-deed is somewhat curious. The mortgageor is expressed to convey the property to the mortgagee out and out, the same words being used as in a sale, but a proviso follows called a "proviso for redemption" that, if the mortgageor repays to the mortgagee the sum borrowed, with interest at a stated rate, at the expiration of six months after the date of the deed, the mortgagee will reconvey the property to the mortgageor. According to the literal meaning of the words, the mortgageor would lose the property entirely if he failed to repay the money with interest at the end of six months. But this is not their legal effect. The legal effect of the proviso for redemption is clearly established, and is that the mortgageor may redeem the property at any time thereafter unless and until one of three things shall have happened, either (1) the mortgagee shall

have sold the property, or (2) the mortgagee shall have foreclosed the property, a process which will be explained below, or (3) the mortgagee shall have entered into possession of the property and remained in possession for twelve years without giving the mortgageor any written acknowledgment of his right to redeem the property.

At the time at which the mortgage is effected, the mortgagee advances his money to the mortgageor, and the mortgageor executes the mortgage-deed and delivers it to the mortgagee, and delivers to him also all the prior title-deeds of the property. The possession of the title-deeds is more important to a mortgagee than to a purchaser: for a purchaser takes possession of the property which he buys, and thereafter the fact of his being in possession gives notice of his title to any one inspecting the property. But after a mortgage the mortgageor is still left in possession, and appears to all the world as the absolute owner of the property; and, if he kept the title-deeds, there would be nothing to prevent him from selling the property to some one else, or indeed raising money on mortgage of the property over and over again.

The law does not require mortgages to be registered, except in those districts in which all deeds are registered. In the opinion of the writer of this book, the law ought to require mortgages to be registered everywhere, and should not require purchase-deeds, which carry possession with them, to be registered anywhere. But that is not the law.

At the time at which a mortgage is effected it is ordinarily contemplated by both parties that the mortgageor shall remain in possession of the land, and merely pay interest to the mortgagee; and that that state of affairs shall continue until the mortgagee shall have occasion to require repayment of his capital, or the mortgageor shall find it convenient to pay it off. It is not uncommon to find mortgages existing which were first created a great number of years ago, and where the parties entitled to the land and the money are both well

contented to let matters remain as they are. The mortgagee has a good security for his money, and the owner of the land finds it more convenient to pay the interest half yearly than to pay off the capital. When a mortgage has subsisted for more than six months the interest of the mortgageor on the property is called "an equity of redemption," and indeed that expression is used during the first six months also.

At the time of effecting a mortgage it is open to the parties to make any arrangement which they like, as to the time of repayment, rate of interest, and other like matters; and it is not uncommon to find a clause providing that, if the interest is punctually paid, the mortgagee will not call in his money for a specified number of years, such as seven or ten. It is also common to find interest reserved in the first instance at rather a high rate, but followed by a clause stating that if it is paid punctually a lower rate shall be sufficient. There are also at times clauses specifying the circumstances under which it shall be lawful for the mortgagee to sell the property. If nothing is said upon the last-mentioned point, the mortgagee may sell the property if the interest falls two months in arrear, or if he gives the mortgageor notice to pay off the principal, and the mortgageor fails to do so for three months (see the Conveyancing Act, 1881, ss. 19, 20).

If a mortgagee thinks fit, he may take proceedings to foreclose the property instead of selling it. In order to do so he institutes an action called a "foreclosure action" against the mortgageor, and applies at once for the ordinary judgment drawn up in such an action. This judgment directs an officer of the Court to take an account of the sum due to the mortgagee and to certify the amount of it, and gives the mortgageor six months from the date of the certificate to pay the sum found due with interest up to the end of such six months, and directs that if it is paid the mortgagee shall reconvey the property, but if it is not paid the mortgageor shall be foreclosed, that is to say, shall no longer be entitled to redeem the property. If the money is not repaid at the end of the six

months a further order is drawn up making the foreclosure absolute.

If a mortgageor makes default in paying his interest, and the property is not likely to sell for the full amount due upon it, but may have its value enhanced by a little outlay in building, it is clearly best for the mortgagee to foreclose it. If the mortgagee laid out money upon the property without foreclosing, and thereby made the property much more valuable, the mortgageor would still have the right to redeem the property and would reap the profit produced by the mortgagee's outlay.

A mortgagee is also entitled, at any time, to take possession of the property and oust the mortgageor; and if he does so and retains possession for twelve years without giving the mortgageor any written acknowledgment of his right to redeem the property, the mortgageor's right is barred. But the mortgageor may apply to redeem the property at any time within the twelve years. If the mortgagee resists redemption, the mortgageor may bring an action against him called a "redemption action," in which a judgment will at once be made in the same terms as in a foreclosure action, giving the mortgageor six months to redeem, and declaring him foreclosed if he fails to do so.

If the mortgaged property is a good security for the money, a foreclosure action never becomes necessary, for if the mortgagee gives notice requiring repayment of his money, the mortgageor is able to borrow it from some one else, and the old mortgagee thereupon executes a transfer of his security to the new lender.

A mortgage may be transferred by deed from one person to another. A deed is always required for the conveyance of freehold land. By the deed the old mortgagee is expressed to assign to the new mortgagee the principal sum due, together with all future interest, and to convey the mortgaged land to the new mortgagee subject to the mortgageor's equity of redemption. Any person taking a transfer of a mortgage

should previously inquire of the mortgageor whether the whole sum is still due, for a mortgage is not a negotiable security, and any transferee of it takes it subject to all defences which the mortgageor might raise against the transferor. Hence, it is desirable to make the mortgageor join in a transfer of a mortgage, and admit that the whole sum is due, and admit the date up to which interest has been paid. In general, a transfer of a mortgage takes place when the original mortgagee calls in his money, and the mortgageor gets some one else to lend it instead. In such a case the mortgageor, of course, joins in the transfer and pays the cost of it. If ever a transfer of a mortgage takes place, without the mortgageor being a party, notice of the transfer should be at once given to the mortgageor; otherwise he might repay the money, or some part of it, to the original mortgagee.

Long leasehold property is often of considerable value, and may be the subject of a mortgage. In effecting a mortgage of leaseholds it is always thought best to make the mortgageor subdemise (*i.e.* underlet) the property to the mortgagee for the whole of the original term, except the last day, free from any rent or covenants. This is done in order that the mortgagee may not become personally liable to the lessor for the rent and covenants contained in the original lease; but, of course, nothing can impair the rights of the lessor against the original lessor and the property itself. In other respects, a mortgage of leaseholds resembles a mortgage of freeholds.

Copyholds may be the subject of a mortgage. This is effected by the mortgageor surrendering the copyholds to the use of the mortgagee, adding words to the effect that the surrender shall be void if he pays the amount of the mortgage-money with interest at the expiration of six months. The surrender is accompanied by a deed whereby the mortgageor covenants to pay the money. The mortgagee then does not take admittance, for he would have to pay a fine if he did; and, if the mortgage-money is ever repaid, the mortgagee authorizes the steward of the manor to enter satisfaction upon the

surrender. Until satisfaction is entered upon a surrender, the mortgagee may be admitted under it; but, if once satisfaction is entered upon a surrender, no admittance can thereafter be made under it.

If a mortgage of copyholds is being transferred with the mortgageor's concurrence, the course generally adopted is, to enter satisfaction upon the surrender to the old mortgagee, and let the mortgageor make a new surrender to the use of the new mortgagee. At the same time, the old mortgagee assigns the debt to the new mortgagee by a deed in which the mortgageor joins. But this course cannot be adopted if the mortgageor has created a second mortgage in favour of some other party; for such other mortgage would become a first charge upon the land if satisfaction were entered upon the prior surrender. In such a case, therefore, it is necessary for the first mortgagee to be admitted and then surrender the land to the use of the transferee.

There is a stamp-duty payable upon mortgages at the rate of 2s. 6d. per £100 of the money secured; and if a document is executed whereby money is expressed to be charged upon land, without a formal mortgage being executed, the stamp-duty is 1s. per £100. A transfer of a mortgage bears a stamp-duty of 6d. per £100.

A person proposing to lend money on the security of property should investigate the title of the borrower, and make searches and inquiries in the same way, as if he were about to purchase the property.

CHAPTER XVIII.

RATES AND TAXES.

INCOME tax is imposed on the income of all property producing income ; but in the case of land it is generally called "landlord's property tax." A special Act of Parliament is passed every year specifying the rate at which it is to be paid during the next twelvemonth ; but the tax is kept as far as possible at a uniform level, and only occasionally raised or lowered when the general revenue of the country shows a decided deficit under, or surplus over, its expenditure. The income tax on the income of the public funds is deducted from the dividends before they are paid ; all companies pay directly to the Crown the income tax upon their profits, and then divide the surplus among the shareholders, so that the income tax on the dividends has already been paid before they reach the parties entitled to them ; in the case of debentures and preference shares bearing a fixed rate of interest, the company pays the income tax thereon direct to the Crown, and pays to the holders of debentures and preference shares the amount of their interest, with a deduction of the income tax. Nearly, if not quite, all foreign countries, which have raised loans in England, pay the interest through some agent in this country, and such agent pays the entire income tax upon each instalment of interest to the Crown, and pays the bond-holders the amounts of their interest with a deduction of the tax. In the case of mortgages, the mortgageor is entitled to deduct income tax from every instalment of interest which he pays to the mortgagee. He does not make any direct payment of

the amount so deducted to the Crown ; but it falls upon him by reason that he receives the rents of the mortgaged property with income tax deducted from them. For in the case of land, the income tax is collected on the spot and paid by the occupier ; but the occupier is entitled to deduct it from the rent which he pays to his landlord, and if land is let at a freehold ground-rent, underlet at an increased leasehold ground-rent, and then let at rack-rent to an occupying tenant, each tenant would deduct income tax at the current rate from the rent which he paid to his immediate landlord. The incidence of income tax cannot be affected by any contract between the parties. A clause in a lease that the tenant should bear the income tax, and pay the full rent without deducting it, would be void. A clause in a mortgage that the mortgageor should pay the interest without deducting income tax would be void also. Income tax is the only tax in respect of which the legislature has thought fit to insist that the burden shall be borne by the party on whom the legislature directs it to be thrown. In case of other taxes, a contract by A to pay B's taxes is valid ; and it is indeed usual to insert in leases a clause providing, in the widest terms, that the lessee shall pay all rates and taxes which may become payable in respect of the property, except the landlord's property tax. (But see below as to tithes.)

Another tax which affects lands, is inhabited house duty. This is payable in respect of all inhabited houses, not being merely business premises left at night in charge of a caretaker. It has been for many years a permanent tax, though subject to slight modifications from time to time. Both landlord's property tax and inhabited house duty are collected in each district by the collector of Crown taxes.

Land tax was a tax first imposed soon after the revolution of 1688. The total amount of it was distributed somewhat irregularly over the districts into which the country was then divided, and the amount apportioned to each district was left to be raised each year by a rate there by the local rating

authority. These districts are now called "land-tax parishes," and appear to represent the parochial divisions which existed when the tax was first imposed. The inequalities in the original distribution of the tax have become more marked in the course of two centuries. The value of landed property has risen immensely in some districts, and the land tax is raised in these districts by a trifling rate. In other parts, a substantial rate is required to meet the tax every year. But land tax is now limited to a rate of a shilling in the pound on the annual value of the land subject to it (Finance Act, 1896, s. 31): that limit cannot be exceeded.

Facilities have long been afforded for redeeming land tax, that is to say, paying a sum of money to the National Exchequer, in return for which the property, in respect of which it is paid, is thereafter freed from the payment of land tax altogether. The price of redemption is now fixed at thirty years' purchase, that is to say thirty times the sum payable under the last assessment of land tax (Finance Act, 1896, s. 32). Whenever a landowner is about to build upon his land, it is clearly his interest to redeem the land tax before commencing his operations. If land is rated at £50 a year and the land tax comes to 2*d.* in the pound, the total land tax on the property will be 100 pence per year, and will be redeemable for 3000 pence or £12 10*s.* But if he first builds upon the property and raises its annual value to £200 a year, the land tax will be 400 pence or £1 13*s.* 4*d.* per annum, and the cost of redemption will be £50. In this state of facts it has very naturally happened that land tax has been very extensively redeemed.

Tithes, now commuted into tithe rent-charges, constitute another burden upon land. It is said that originally the rector of each parish was entitled to one-tenth part of the produce of all the land and animals in it. In the course of time many monasteries became rectors of parishes, and employed a priest, called their "vicar," to perform the services in the church, and allowed him to receive certain tithes of

minor value, but kept the bulk of the tithes for themselves. The vicar's share came to be called the "small tithes" or the "vicarial tithes;" while the share of the monks was known as the "great tithes," or the "rectorial tithes." At the dissolution of the monasteries their property was vested in the Crown, and much of it was granted by the Crown to laymen. Hence, in many cases, the rectorial tithes came to lay hands as private property, and such tithe-owners are sometimes styled "lay-impropriators."

The system of awarding one-tenth of the produce to the tithe-owner was well calculated to cause local quarrels, and this was all the more lamentable when the parson of the parish was one of the parties concerned. In many cases, therefore, a custom grew up of making a payment in money instead of kind, and arranging for the money payment to depend somewhat on the value of farm produce. This was called a "modus." At length the Tithe Commutation Act, 1836, was passed providing for the commutation of tithes everywhere into rent-charges, fixed in the first instance by commissioners, and thereafter varying with the price of corn. This commutation has long been universally carried out.

Provision has been made for the redemption of tithe rent-charges, but it cannot be readily applied except in special circumstances, one case being when land is split up into small portions for building, so that the collection of the tithe rent-charge becomes troublesome and costly. In general, therefore, land is subject to tithe rent-charge, and it forms indeed a very heavy burden upon agricultural land. Tithe rent-charge is collected by the tithe-owner himself or by some collector employed by him.

In the year 1891 a Tithe Act was passed (54 Vict. c. 8) enacting that tithe rent-charge should be payable by the owner and not the occupier, and making void any contract to the contrary. But the definition of owner contained in the Tithe Acts is rather curious (Tithe Act, 1891, s. 9; Tithe Act, 1836, 6 & 7 Will. IV. c. 71, s. 12), and it seems to follow

that, under a lease for more than fourteen years at a rent of less than two-thirds of the rack-rent, the tithe rent-charge may be thrown on the lessee.

Land is everywhere subject to the ordinary parochial and municipal rates : such as poor-rate, highway rate, lighting rate, police rate, sewer's rate, county rate, school-board rate, and the like. Special rates are also occasionally levied for making new roads fit for public traffic, and paving the footpaths of new roads, and of old roads with unpaved footpaths which become streets by the erection of buildings along them. It has been thought right that the adjoining owners should pay these expenses in the first instance ; but when once this has been done, and the roads and paths have been rendered fit for the public, they are said to become repairable by the inhabitants at large, and the cost of their maintenance falls upon the general highway rate. The cost of making up a road and paving its footpaths is not a light matter ; so that, if a house stands at a corner, and, besides its proper frontage on one road has a "return frontage" (as it is called) upon another road, it may subject the owner to a very heavy paving-rate.

This is a point which requires attention when any one is contemplating purchasing a house ; and a tenant taking a house on lease for a term of years should see that he does not make himself liable for a paving rate, if one should be levied during the term. The highway authority in each district, on resolving to pave a road, is entitled to levy the rate first, and do the work afterwards, and this course is usually pursued.

With respect to income tax, which has been mentioned above, reference should be made to the Income Tax Act, 1842, 5 & 6 Vict. c. 35, Sched. A. IV. § 9, and the Income Tax Act, 1853, 16 & 17 Vict. c. 34, s. 40 ; and it may be added that provision is made for the payment of the tax direct by the landlord, where that course is most convenient, as in the case of tenements let in apartments, or on weekly tenancies.

CHAPTER XIX.

LANDED ESTATES.

IF a man has made a fortune and laid it out in land, and has had a peerage conferred upon him, it is natural that he should wish to leave his land by will so that it may go with the title as far as possible.

He will then find that he can make the land go with the title during the lives of such of his descendants as are living at his death, but he cannot prevent the first of his successors who is born after his death from acquiring absolute power over the property. If he has sons and grandsons but no great-grandson living at his death, he may leave his land to his eldest son (No. 1) for life, and after his death to the eldest son (No. 2) of that eldest son (No. 1) for life, and these would then be called the first and second "tenants for life" of the property. But if he wished to give it afterwards to the eldest son (No. 3) of the second tenant for life, he would find that he could not help putting it in the power of this third successor to gain complete power over the property, so as to be able to sell it out and out. The rules of law which bring this about are called the "rules of perpetuities" or remoteness; and the principle of the law is said to be that it will not allow a perpetuity to be created for a private object. A man may direct the income of property to be applied in perpetuity, for charitable purposes or, indeed, for any public object. All public objects are called "charities" in legal language. But such a purpose as keeping up a family, and endowing the inheritor of a title, is merely a private object. The law, therefore, regulates matters so that

as soon as the first unborn successor attains twenty-one, he and the tenant or tenants for life, who precede him, can acquire complete dominion over the property. Ordinarily the will, which settles the property, contains words which give to the first unborn successor an "estate tail" as it is called, and the land is then said to be "entailed." If an estate tail is left alone, it will devolve as a title devolves; but it is open to the owner of the estate tail (who is called a "tenant in tail"), to bar the entail. In order to bar an entail the tenant in tail must execute a deed and take it to an office called the "enrolment office" and pay a fee to have it enrolled, that is to say, to have a complete copy of the deed made and kept at the office. The rolls at the office may be examined by any one, so that all the world can discover whether the estates are still devolving as directed by the will, or whether some tenant in tail has barred the entail and made a different disposition of them.

We may here remark that when a deed is taken to an office and a complete copy of it is made and kept there, it is said to be "enrolled;" when it is taken to an office and a note of the date and the parties to it, and a few other particulars are entered in registers kept there, it is said to be "registered;" when a deed itself is left to be kept at an office, it is said to be "filed" there.

Returning to our settlement we ought to add that there are several kinds of estates tail, the principal being (1) an estate in tail general which, if not barred, is capable of descending on all the issue of the first tenant in tail in a certain order, and (2) an estate in tail male, which is only descendible on male issue. The latter is generally employed in settling land to accompany a title, because titles are almost invariably granted to the first taker and his heirs male. The words generally employed in deeds and wills to give a person an estate in tail general, are to say that the land shall go to him "and the heirs of his body," while a gift to one "and the heirs male of his body" confers an estate in tail male; but there are other forms of words which may be used to produce the same effect.

We will suppose, therefore, that our titled landowner devises his lands to his eldest son (No. 1) for life, and, after his death, to the eldest son (No. 2) of No. 1 for life, and, after his death, to the eldest son (No. 3) of No. 2 and the heirs male of his body; he may go on to say that on failure of heirs of male of No. 3 the lands, like the title, shall go to the second son (No. 4) of No. 2 and the heirs male of his body, and on failure of such heirs male, to the third and other sons of No. 2 successively in tail male, and in default of all such issue, to the second son of No. 1 for life, followed by estates in tail male to his sons and so on. In this way the land can be made to go with the title until the entail is barred; but the moment any tenant in tail attains twenty-one, the operation of barring the entail can be performed.

In practice, an entail is generally barred as soon as the first tenant in tail is about to marry, and the barring of the entail is immediately followed by a fresh settlement of the property, in which the late tenant in tail takes only a life estate, and after his death, the land is given to his eldest son for an estate in tail male; so that really the general object of barring an entail is to prolong it for another generation.

Generally the father of the tenant in tail is in possession of the property as tenant for life at the time at which the tenant in tail attains twenty-one; and, that being so, the tenant in tail cannot fully bar the entail without his father's consent. It is desirable that the law should stand thus, but it has been framed on curious technical grounds, although the result coincides pretty well with the demands of expediency. It would take us too far away from our present subject to explain how the law on this point has grown up, though it is in itself an interesting piece of legal history.

To return to our great landowner's will. We have shown how he can leave the bulk of his landed estates so as to accompany his title; but his titled descendant is not the only person for whom he may have to provide. He may leave a widow and other children, and each of his titled descendants

may do the same. Some provision is always made for these. The will would ordinarily give to the widow an allowance of a fixed annual sum during widowhood; this is called a "jointure." Such a jointure would ordinarily be a small part of the annual rental of the entire property, and the first tenant for life under the will would enter into receipt of all the rents of the property and pay his mother's jointure. But this tenant for life might outspend his income and go bankrupt; and, to provide for such contingencies, the will would contain provisions enabling the widow, or some trustees for her, to enter into receipt of the rents, and pay first the widow's jointure, and then hand over the balance to the parties who might become entitled thereto.

The testator's children, other than his eldest son, have next to be thought of; and here we may mention that, in legal language, all such children are included in the expression "younger children;" although some, or indeed all of them, being daughters, may be older than the eldest son.

Under a will, younger children often take legacies of money, or gifts of land, not included in the settled land at all; but when it is necessary to give them a slice out of the settled estates, the device is generally adopted of charging the land with the payment of a sum of money to be divided amongst them, and empowering certain trustees to raise the money by mortgage or sale of the land. The sums payable to them are called their "portions," and are always made to bear interest until they are paid off. Such sums often remain for generations charged upon the family estate. The parties entitled to the portions, the "portioners" as they are sometimes called, are well content to receive their interest regularly, and the head of the family has no desire to pay them off.

A will or settlement of lands often provides an allowance to the wife of the tenant for life, during her husband's life, for her personal expenses. This is called "pin-money" and is secured like a jointure, but is naturally much smaller in amount. The will would further give powers to each successive tenant

for life to charge the estates with a jointure for his widow, and with portions for his younger children.

Furthermore, it is necessary to provide for the management of the property at all times; and, for that purpose, powers to grant agricultural leases, mining leases, and building leases, are required. Then powers are given to trustees to exchange parts of the settled estate, and to sell any parts with directions for laying out the proceeds of sale in the purchase of other lands, and investing it in the intervals between sale and purchase; and special powers of management are required for the case of any owner of the estates being under the age of twenty-one years.

It will be seen that a settlement of a large estate, whether made by will or deed, is a very complicated affair. The length of such a settlement has been somewhat reduced in recent years by the help of certain Acts of Parliament, which provide that, whenever a settlement is made, and trustees thereof are appointed for the purposes of the Acts, the person entitled to possession of the settled land and the trustees shall together have a number of the powers which were formerly usually inserted in settlements.

It will be seen that, in the settlement above described, the person really entitled to the enjoyment of the property is made the legal owner for life; and all powers of leasing are generally conferred upon him. The action of the trustees is only called for when a sale takes place, in which case they receive the proceeds of sale, and re-invest it; but, if the party entitled to the enjoyment of the property is of full age, his consent is always required for every sale and re-investment.

Such a settlement as has been above described is called a "realty" settlement. Before proceeding to describe a "personalty" settlement, it may be well to devote a chapter to explaining the meaning of these words.

CHAPTER XX.

REAL AND PERSONAL ESTATE.

IN English law we hear a great deal of the division of property into realty and personalty, or real and personal estate. This division coincides to a great extent, but not entirely, with the natural division of property into fixed and moveable property. Freehold and copyhold lands are deemed real estate. Money, furniture, bills of exchange, promissory notes, stock in the funds, shares in companies, debentures, and bonds of foreign governments, are deemed personal estate. Strange to say, also, the interest of a lessee of land under a letting from year to year, or by the month or the week, or under a lease for a term of years, however long, is deemed personal estate. If land were by deed demised to A for a billion years at a peppercorn rent, his interest in the land would be considered personal estate.

The earliest known specimens of personal estate were furniture and cattle, so that the expression "goods and chattels" came to be used to denote them, and inasmuch as the word "good" has many meanings, the latter word "chattel" came to be employed as specially appropriate to personal estate; and, by a curious combination, lands held under a lease for years came to be described as chattel interests in real estate, or more shortly, as "chattels real," while other items of personal estate are called "chattels personal."

The principal difference in the legal incidents of real and personal estate is seen when an owner of them dies intestate, that is to say, without making a will. An administrator is then appointed to pay the debts and funeral expenses of the

deceased, and to pay certain duties which are payable to the Crown, and to hand over the balance to the parties entitled. In thus administering the estate of the deceased, the personal estate is applied first in paying the debts; but the duties are payable in part out of personal estate and in part out of real estate. The property left by the deceased available for paying his debts, is called his "assets." When all debts and duties are paid, the remaining assets have to be made over to the parties entitled to them.

The Acts of Parliament regulating the devolution of the personal estate, are called Statutes of Distribution.

When a married woman dies intestate her husband becomes entitled to all her personal estate, whether she does or does not leave any issue surviving her. But with land it is different. In the case of ordinary freehold land, the husband takes nothing unless his wife was in possession of the land, and unless he had issue by her; but if these conditions are fulfilled, he becomes entitled to her land for the rest of his life. He is then called "tenant by the curtesy," and his life estate in the land is called his "curtesy." It is not necessary that the issue should survive the wife; it is sufficient if any child of the marriage was born alive. Subject to the husband's curtesy, the wife's land would go to her heir-at-law. Her eldest son would be her heir-at-law if he survived her.

If a married man dies intestate, leaving his wife and all his children surviving him, and he has not already made a separate provision for any of his children, the law is as follows: the widow takes one-third part of his personal estate absolutely, and the rest of his personal estate is divided equally amongst all his children; while the widow takes only a life estate in one-third part of his ordinary freehold land, which subject thereto, descends on his eldest son alone. The widow's life estate in one-third part of her husband's land is called her "dower."

The rules which regulate the devolution of real and personal estate are different in other circumstances, also, as well as in the cases above mentioned; and both of them present numerous

little intricacies, which cannot be stated shortly. In dividing a man's personal estate amongst his children, an inquiry must be made whether he has previously made a provision for any of them, which may properly be regarded as an advance on account of their shares; if so, such advance must be taken into account in dividing the rest of his estate. When an advance is taken into account in making such a division it is said, in legal language, to be "brought into hotchpot."

We ought also to explain the expression "ordinary freehold land" which has been used. The bulk of the freehold land in the county of Kent is subject to a special custom, called the "custom of gavelkind;" and in some towns, land is subject to a custom called the "custom of borough-English." Under the custom of gavelkind, the rights of a widow and widower are not quite the same as in land where no special custom prevails, and under both customs the rules as to heirship are different. When an owner of gavelkind land dies intestate, all his sons take his land in equal shares; when an owner of borough-English land dies intestate, his youngest son takes his land. The last-mentioned custom appears to be based on the idea that, as the elder sons attained maturity, each would be forisfamiliaried by the father, that is to say, started in life and provided for, but that the youngest son would remain with his father as long as he lived; it would follow, therefore, that the share of the patrimony retained by the father until death would represent the portion of the youngest son.

The expression "ordinary freehold land" therefore meant freehold land not subject to any special custom, but regulated by the general laws.

The descent of copyhold lands may also be regulated by special customs; indeed, every manor may have its own set of customs. Hence, whenever copyhold land descends, it becomes necessary to inquire of the steward of the manor whether any special custom of descent exists in the manor. In some manors a custom resembling gavelkind exists, in some a custom resembling borough-English, and some have

other customs of their own. In some manors copyhold lands, which an owner acquired by inheritance, descend in a different way from those acquired by purchase.

These observations alone would show that it is very desirable that every person who possesses any property should make a will, and there are many other considerations which strengthen that conclusion. We may add, that it is very desirable that every person, who is not a lawyer, should employ a lawyer to make his will. Very much more in the way of costs is caused, than is saved, by the neglect to take this very reasonable precaution.

CHAPTER XXI.

PERSONALTY SETTLEMENTS.

(a) General Description.

IN a previous chapter we described a realty settlement. Such settlements are only made by great landowners, and those persons are comparatively few in number. We can now proceed to describe a personalty settlement. Personalty settlements are commonly made on marriage by all persons possessed of a moderate amount of property invested and producing income. It is eminently desirable that such persons should on marriage make a settlement whereby they restrict themselves to the enjoyment of the income of their property during their lives, and preserve the capital for their children. The fact, that the law enables such settlements to be made, and that the custom of making them is generally adopted, conduces in a great measure to create a numerous middle-class in comfortable circumstances, which, socially and politically, is a source of great strength and stability to the country. It is not an uncommon thing to hear amateur law-reformers talk in an off-hand way of abolishing the law of settlement and entail. So far as the law of entail means anything apart from the law of settlement, it is little more than a technical verbal affair. But if any one could effect an alteration in the law so as to make settlements impossible, as for instance by enacting that every gift to, or trust for, an unborn person should be void, he would inflict a most serious injury upon the community.

Let us imagine now, that a marriage is contemplated

between two parties whom we will designate by H and W, using H for the intended husband and W for the intended wife; and that H is entitled to some shares in a railway company of the nominal amount of £10,000, and that W is entitled to £5000 consols, and it is desired to make a settlement of these sums.

The first thing that H and W would have to do, would be to find some friends who would act as trustees of their intended settlement for them. Trusteeships are not altogether pleasant affairs: trustees are never paid, they always have trouble and anxiety, and occasionally are exposed to losses through mere good nature or confidence in others. Still, all right-thinking people should regard it as a social duty, which they owe to their near relatives and friends, to undertake the responsibility of becoming trustees of their property. It is best, if possible, to appoint four trustees of a settlement in the first instance. It is unwise to appoint more than four, because stock in the funds, and a good many other investments, cannot stand in the names of more than four persons. And it is best to appoint the full number of four trustees, because the number will naturally become reduced in the course of time by deaths, and it may then become necessary to appoint new trustees; and an appointment of new trustees involves trouble and expense, so that the necessity for it should be avoided as far as possible.

When trustees are found, H should transfer his shares, and W should transfer her consols, into their names. The trustees would appear in the books of the railway company as the absolute owners of the shares, and in the books of the Bank of England as the absolute owners of the consols. Neither the Bank of England, nor any company, takes any notice of trusts. If, therefore, all the trustees but one died, that one would be able to sell the shares and consols, and decamp with the proceeds. This would be called "embezzling the trust-funds." Such an act is criminal, punishable with as much as seven years' penal servitude. A single trustee, involved in pecuniary difficulties, sometimes commits a desperate fraud like this;

but such a crime cannot well be perpetrated if the funds are standing in the names of two or more trustees. Hence, it is prudent to appoint new trustees whenever the number of trustees is reduced to one. Indeed, if any question relating to trust-property comes before the High Court of Justice, the Court will never permit any trust-money to be paid to a single trustee, but will keep the money under its own control until, at least, one additional trustee is appointed. The mode of appointing new trustees will be mentioned below.

To return to our settlement. When a marriage is about to take place, a solicitor is always employed to prepare all the documents necessary for making the settlement. He would, accordingly, prepare a transfer of the £10,000 shares from H to the trustees, and a power of attorney, whereby W would authorize some one on her behalf to transfer the £5000 consols into the names of the trustees. The latter document would only require the signature of W and the witnesses; but the former document would require the signatures of H and all trustees, besides witnesses. It generally happens that all the trustees are attending as guests at the wedding, and the signatures of all necessary parties can be obtained the evening before the wedding takes place. The settlement itself is also executed at the same time. It is necessary that the bride and bridegroom should sign the settlement before the wedding; but, if any of the trustees are not accessible at the moment, their signatures can be obtained afterwards.

The settlement is always made by a deed, and in a simple case, such as we are considering, the parties to it would be (1) H, (2) W, and (3) the four trustees. The settlement commences with its date, which is almost always the day before the date of the marriage; then follow the names and addresses of the parties; then there would come recitals that a marriage had been agreed upon, and was intended to be shortly solemnised between H and W, and that a settlement had been agreed upon, and that in view thereof, H had transferred the £10,000 shares, and W the £5000 consols, into the names of the trustees.

It would then be declared that the trustees should stand possessed of the shares and consols on trust, for H and W respectively, until the marriage should be solemnised, and afterwards on the trusts thereafter declared. Then would follow (1) a power to vary the investments, (2) a direction to pay the income of the shares, and the investments representing them, to H for life, and that of the consols and the investments representing them, to W for life, and the income of both properties to the survivor for life; (3) a declaration that, after the death of the survivor, the capital should be held on trust for the children of the marriage, as H and W should by deed appoint, and that any part not appointed by them jointly should be held on trust for the children as the survivor should by deed or will appoint; and (4) a declaration that any unappointed capital should be divided equally among the children, with a clause, called a "hotchpot clause," directing that no child to whom any sum was appointed should take any part of the unappointed funds without bringing the appointed sum into hotchpot, as it is called. Clauses would follow providing (5) that, if both H and W died leaving any infant children, the trustees might apply the income of the shares of such infants for their maintenance and education; and a clause (6) would follow, enabling the capital of children's shares to be applied in certain cases for their advancement, that is to say, to start them in life. A further clause (7) would deal with the devolution of the property after the death of both H and W, if there were no children; it would give them the power of disposing of the funds representing their respective original properties. A clause (8) providing for the settlement of any after-acquired property of the wife, is often inserted, and a clause (9) giving some powers to the trustees; and the settlement generally concludes with (10) a power to appoint new trustees. Each of these clauses will require a little separate explanation.

§ 1. *Power to vary Investments.*

A power to vary investments is always inserted in a settlement so that any part of the trust-funds may be sold, if ever it appears to be desirable that that should be done, and the proceeds may be invested in some other manner. Care is always taken to provide that, during the lives of the husband and wife, the trustees shall not be entitled to change any investment without the consent in writing of both of them, and that during the life of the survivor there shall be no change without the consent in writing of the survivor. The trustees are generally authorized to vary investments at their discretion after the death of the survivor. The power thus conferred upon them would endure until the youngest child attained twenty-one, whereupon the whole trust-fund would become divisible.

In giving a power to vary investments it is, of course, necessary to specify what investments may be bought in the place of those sold; and for this purpose it is convenient to make a list of the investments authorized by the settlement, and append it as a schedule to the settlement, so that it may be readily found and easily read. The legislature has recently assisted the framers of settlements very much, in this respect, by drawing up a tolerably long list of good, sound, permanent investments, and enacting that trustees may, with the consent of the proper parties, invest in any of them unless forbidden by the terms of their settlement (Trustee Act, 1893, ss. 1. 3). No one ever thinks of forbidding any of these statutory investments. Monthly price-lists of all investments ordinarily quoted on the London Stock Exchange are issued by stock-brokers, in which they give particulars of all such investments, and show what rate per cent. the income of each bears to the price of investment; and in these lists they mark all the investments by law allowed to trustees. On perusing one of these lists, however, it will quickly be seen that the investments by law allowed to trustees stand at a very high price, and bring in a small return in the way of income. It is wise, therefore, for all

persons making settlements, to select some of the sound permanent investments, which are not open to all trustees, and include them in their list of investments permitted by the settlement. It is also wise for them to put a clause in the settlement, authorizing the trustees to invest the trust-money in land, either for a home for the family, or by way of an investment producing income. Such a clause can be framed so as to make the beneficial interest in the land devolve like personal estate: this result is attained if the trustees are directed to sell the land again and divide its proceeds with the rest of the trust-funds. The land is then said to be "converted in equity into personalty."

§ 2. *Trusts of the Income.*

It is usual for the settlement to direct the trustees to pay the income of the investments from time to time, representing the property settled by the husband, to the husband for life; and the income of the investments from time to time, representing the property settled by the wife, to the wife for life; and the income of the whole, to the survivor for life. The language applicable to land is borrowed for a personalty settlement also, and a party to whom the income of any property is payable for life is called the "tenant for life" of that property. When land is legally vested in a man for life, so that he is entitled to possession of the land for his life, he is called a "legal tenant for life;" but when it is vested in other persons upon trust to receive the rents and pay them to him for life, he is called "an equitable tenant for life." There cannot be a legal tenancy for life of personalty such as we are considering. It must, necessarily, be vested in trustees in order to create a life interest in it.

When property is vested in trustees upon trust for others, the trustees are termed the legal owners of the property, and the persons for whom they are trustees, are said to take equitable or beneficial interests in it, and are called "beneficiaries." *Cestui que trust* is another name for a

beneficiary: the plural of it is generally spelt *cestuis que trustent*, and pronounced *cestui que trusts*. These words are evidently old Norman French for "he that trusts," and "those that trust."

When a tenant for life of any property dies, the income of the property for the period which is current at his death will be apportionable, when it is received, between his representatives and the persons who take the property after his death, in the ratio of the number of days before and after his death in the period in question. If H's £10,000 shares produced £450 a year, payable half-yearly on January 1st and July 1st, and he died on the 1st September, he would have lived 61 days since July 1st, and died 122 before January 1st; so that when the £225 came in on the following 1st of January, $\frac{61}{183}$ or one-third, that is, £75, would be payable to his executor, and the remaining £150 would go to his wife or children under the settlement.

The fact that the income of the investments representing the husband's and wife's properties are payable to them respectively, renders it necessary for the trustees to keep accounts showing what investments from time to time represent their respective properties. It is also noticeable that, on failure of issue of the marriage, the capital of the two fortunes may go different ways; so that the accounts should be kept distinct through the whole period for which any different destinations of either capital or income are possible.

The settlement generally directs the trustees to pay the income of the husband's property to him "or his assigns" during his life. He may sell his life-interest in the property, or borrow money upon security of it, or it may be attached by his creditors, or he may become bankrupt, in which last-mentioned case it would all be payable to his trustee in bankruptcy for the benefit of his creditors. The property of a man or a single woman is necessarily liable to all these incidents, but in the case of a married woman the law allows a special protection to be thrown over her. The words "without power of anticipation" may be added to a direction

to pay income to her, and they are regularly added in every settlement. The effect of these words is, that each instalment of income is necessarily payable into the wife's own hands as it becomes due; she cannot sell or mortgage it to any one, it cannot be attached by any creditors, and it would not vest in her trustee in bankruptcy if she were declared bankrupt. An absolutely inalienable income may thus be secured for a married woman. She cannot be "kissed or kicked out of it," she cannot make it over to her husband, nor can she release it to her children so as to enable their shares to be paid to them during their parents' lifetime. This point will be mentioned again under the head of the power of advancement.

In practice, the inalienability of the wife's income seldom becomes material except when the husband gets into difficulties. If the husband is solvent, and is treating his wife and children properly, it is generally most convenient that the whole family income should be placed to his account at a bank, and that he should from time to time supply his wife with the money which she requires for housekeeping and personal expenses. Accordingly, it is not uncommon to find words in a settlement authorizing the trustees to pay the wife's income to the husband, unless and until the wife shall by notice in writing direct it to be paid to her.

At the time of the execution of the settlement, steps are generally taken for minimising the amount of labour which will be thrown upon the trustees. A bank is named at which the husband will keep an account, and the trustees, in our supposed case, would give a direction to the company to pay the dividends on the £10,000 shares to their account at this bank; and they would give to the bank, or some official of the bank, a power of attorney to receive the dividends on the consols. They would then give written directions to the bank to place the dividends on the shares to the account of H, and those on the consols to the account of W, or to place both to the account of H, as might be arranged. Through the whole duration of the trust, they should endeavour to have the

proceeds of all trust-funds, which were sold, placed to their account at the bank, and to pay for all new investments by cheques on that account; so that the bank-books might keep a complete account of their dealings, and they might be saved the trouble of keeping any separate accounts.

§ 3. *Power to appoint Capital.*

A power for parents jointly to appoint the trust-funds among the children is nearly always reserved; and very frequently a like power is given to the survivor of them, and is made exercisable by will as well as by deed. A joint power is evidently incapable of being exercised by will. Sometimes the power given to the survivor is limited to the funds settled on his or her part alone, and sometimes no power at all is given to the survivor.

If the settlement did not contain this power the children would take absolute shares, and would be able to sell or mortgage them the moment they attained twenty-one. The power of appointment prevents this; for, if one child mortgaged his share, the parents might appoint the whole fund to the others, and the mortgagee would take nothing. A child might even be adjudicated bankrupt, without any of the settled property going to his creditors. He would, in due course, obtain a discharge from his bankruptcy, and his parents might then appoint a share to him, and his trustee in bankruptcy would have no claim to it (*Sweetapple v. Horlock*, 11 C. D. 745). In many other ways, the power which the parents have of appointing the settled property gives them a hold over their children. They can let the children know that if they all behave properly they will receive their fair shares of the settled property, but that if any of the children misconduct themselves, the whole of it will be appointed to the others.

We have hitherto only spoken of appointing to children; but it is usual to employ the word "issue" in the power instead of children, so as to authorize an appointment to grandchildren. Sometimes this is desirable, and some appointments to grand-

children can be lawfully made ; but care is necessary in framing appointments to grandchildren on account of the law as to perpetuities or remoteness, which has been alluded to in a previous chapter. Settlements of personalty are subject to certain rules in this respect analogous to the rules affecting realty ; so that in general the settled property must become divisible within twenty-one years after the death of the survivor of the husband and wife.

§ 4. *Devolution of unappointed Fund.*

A settlement generally provides that any portion of the funds remaining unappointed shall be divided equally between all the children of the marriage, who attain twenty-one, or being daughters marry, with the addition of a hotchpot clause. If there were four children of the marriage of H and W, say a son and three daughters, and they all attained twenty-one, and H and W on some occasion appointed a sum of £1000 to the son, and died without making any further appointment : then, if there were no hotchpot clause, the son would first take £1000, and the rest of the trust-funds would be divided equally between the four. But the effect of the hotchpot clause is that the sum of £1000 is brought into account in calculating the shares, so that they would all take equally. If the parents wished the son to have £1000 more than the daughters, they could add a clause to the appointment stating that the sum of £1000 was not to be brought into hotchpot.

The frame of a hotchpot clause generally is that no child to whom any appointment shall be made shall take any share in the unappointed funds without bringing the appointed sum into hotchpot. If, in the case given above, H and W had appointed more than a quarter of the whole funds to their son, it would be his interest to refuse to bring it into hotchpot, and he could refuse accordingly, and leave the unappointed funds to be divided between his sisters alone.

§ 5. *Maintenance Clause.*

It is evidently possible for the parents to die leaving one or more children under the age of twenty-one years. Should this happen, and should the settlement be worded as above mentioned, the infants would not take vested or absolute shares in the settled property, but merely shares contingent on their attaining twenty-one. Each infant who attained twenty-one would take a share, but if any died under twenty-one the whole of the funds would go to the others; and, if all the children died under twenty-one, and no daughter married, the funds would go to other parties under the ultimate trusts of the settlement.

It follows that, if the settlement stopped here, some doubt might be entertained as to the proper application of the income of the contingent shares of minors, and it has accordingly always been usual to insert in such a settlement a clause giving the trustees power to apply the income of such a share in or towards the maintenance and education of the infant. We may observe that such a share is sometimes called an "expectant" share. On the other hand, if some relative left property on trust for the parents for their lives, and after their deaths for their children equally, each of their children would be said to take a "vested" share in that fund. If one of the children then died in infancy, it would be necessary to apply to some probate registry to procure the appointment of an administrator of the deceased child's property, and such administrator would receive the deceased infant's share and distribute it according to the law on intestacy. But where an infant takes only a share contingent on attaining 21, no such procedure is necessary. Then, on the death of one child under 21, the whole fund is given by the settlement to the others. We see here one reason for not giving vested shares to infant children. Another reason is this: that on the death of a child unmarried and intestate in the lifetime of its father, the father takes all its personal estate; and an infant must necessarily

die intestate, because no person can make a will before attaining majority. If a settlement, therefore, gave vested interests to infant children, the shares of any dying in infancy might pass to their father, whereas one object of making a settlement is to keep all the capital of the settled property for the children of the marriage.

The legislature has endeavoured to save people the trouble of inserting a maintenance clause in every settlement, by giving to trustees a general power to apply the income of the property of infants in or towards their maintenance and education (Conveyancing Act, 1881, s. 43); but it is generally thought best to insert such a clause and to express it in rather wider terms than the statutory power. Statute is a name for an Act of Parliament, and statutory power is a name for a power conferred by Act of Parliament. We may add, also, that persons under 21 are termed minors or infants, and persons over 21 are termed adults; the period of life prior to 21 is termed minority, and attaining 21 is termed attaining majority. Persons over 21, who are not lunatics or idiots or under any other legal disability, are said to be "*sui juris*," that is to say, legally competent to contract and dispose of property. A few years ago a married woman was not accounted *sui juris*, but she is now *sui juris* for most purposes.

§ 6. *Advancement Clause.*

An advancement clause generally follows the maintenance clause in a settlement. The object of it is to enable money to be raised out of the capital of the share of any child, and applied to start the child in life. This could not be legally done in the case of any infant child, unless expressly authorized by the settlement; nor could it be done in the case of any adult child during the lifetime of both parents. We have shown above how the wife usually takes an inalienable interest in the income of her own property. That restraint on anticipation lasts as long as her husband is alive, or, in legal language, "*during the coverture*": *coverture* being a name for the legal

protection thrown over a married woman. It follows that if the wife one day begged the trustees to apply some of her settled property for the benefit of her children, she might alter her mind directly it was done, and compel the trustees to replace it out of their own pockets. But, if one of the parents is dead, the surviving parent and any adult child are complete masters of the adult child's share; and if all the children have attained twenty-one, and one parent is dead, the surviving parent and the children together are complete masters of the entire settled property. In the two last-mentioned cases, however, the trustees would have to remember that the property was liable to pay a certain duty to the Crown, called "succession duty;" and it would be necessary for them to see that that was provided for, before handing over the settled property to the children and the surviving parent.

It is often, however, desirable to raise a sum of money to start a child in life, when the child is still an infant or both the parents are living. The advancement clause authorizes this to be done. Of course, the consent in writing of both parents is made necessary for any advancement during the joint lives of both parents, and the like consent of the survivor is made necessary for any advancement while one only of them is living. A son is more likely to require an advancement than a daughter, still it is wise to frame an advancement clause so as to allow a sum to be raised for any child. In general, an advancement clause specifies that not more than half the share of any child, whether expectant or vested, shall be raised by way of advancement.

§ 7. *Trusts in default of Children.*

The parties making the settlements, ordinarily desire to be re-installed in their dominion over their property if they should not have any children, or if all their children should die without attaining any vested interest in the property under the foregoing trusts; that is to say, if all should die under twenty-one and

no daughter should marry. Of course, it might happen that some of the trust property might be applied under the power of advancement, and still the children might die under twenty-one, and so default of children should take place. Subject to any property having been advanced and lost, the settlement would operate to give each of the parties to the marriage, whichever should survive, a life-interest in the other's property, and that could not be interfered with; but subject to that life-interest, the property could be restored to the parties. In the case of the husband, it is usual to say simply that on default of children and subject to his wife's life-interest, the trustees shall hold the investments representing his property on trust for him. Then, if his wife should survive him, the property would remain in the names of the trustees during her life, and they would pay her the income; but subject to that life-interest of hers he could dispose of it by will, or could indeed sell it during his lifetime and spend the money. He would not be able to sell the actual investments, but he would be able to sell the right to receive them from the trustees on the death of his wife. In the case of the wife it is usual to say that, in default of children and subject to the husband's life-interest, the trustees shall hold her property upon trust for such persons as she shall by will appoint, and in default of appointment, if she shall survive, for her absolutely; but if she shall die before her husband, for her next-of-kin as if she had died unmarried. The result of the last-mentioned trust is, that the husband does not take the capital of the wife's property, unless she actually makes a will giving it to him; and the previous words enable her to dispose of it by will made either during her husband's lifetime or after his death. Moreover, it will be seen that when there are no children the wife, if she survives, can have her own property actually transferred to her at any time after her husband's death, and the husband has a like right.

§ 8. *After-acquired Property.*

A clause is very frequently inserted in settlements, providing that if the wife is then entitled to any other property, beyond that settled, or if she shall become entitled to any during the coverture, it shall be settled in the same way as her property originally included in the settlement. Sometimes, but not at all frequently, a similar clause respecting the husband's property is inserted. When any such clause is thought to be expedient, it is wise to qualify it in several ways. It is wise to provide that if any property is left to the wife, and is expressed to be left free from liability to settlement under the clause, it shall be free. It is also wise to except property in the nature of furniture, jewellery, trinkets, books, and the like, and to specify that all such shall be the wife's absolute property. It is also wise to except an annuity for the life of the wife. An annuity can only be settled by selling it, and treating the proceeds of sale as capital: a process which generally involves a substantial loss. With respect to other property, it must be remembered that, by the settlement, the trustees are restricted to certain investments, but any description of property may be left to the wife. She may become entitled to shares to which a heavy liability is attached. Trustees would ordinarily object to allow such shares to be transferred into their names. A settlement generally provides, therefore, that any property, which is not an investment allowed by the settlement itself, shall be sold, and that the proceeds shall be invested in authorized investments. A power, however, to hold other property may well be given, for there are many kinds of property which cannot be sold except at a loss.

§ 9. *Trustee's Powers.*

Old settlements ordinarily contain clauses giving trustees power to give receipts, and to reimburse themselves all costs; but many of these matters are now provided for by law, and

need not be expressly mentioned. There are, however, other points on which greater powers are desirable than those provided by law. When a settlement contains a provision for the settlement of after-acquired property of the wife, some relative may leave her a share in the residue of his estate, and the question of settling his executor's accounts will then arise. It is desirable to relieve the trustees of the settlement from the duty of going into such a question, and to provide therefore that, if any parties become accountable to the trustees of the settlement, the husband and wife may approve their accounts, and the accountable parties shall be discharged on payment to the trustees of the balance of the accounts so approved.

It also often happens that, on the death of the husband and wife, there are some adult children and some under age; and the adult children may wish to receive their shares. But the whole trust-fund is not divisible, and trustees cannot safely pay over a share in a trust-fund before the whole is divisible. The investments may not all be capable of being divided into the required number of equal parts, and then, if the trustees hand over some, and the remainder fall in value, the younger children may complain that the trustees have overpaid the elder. It is desirable, therefore, to give trustees power to fix the value of a vested share at any time, and to raise it and pay it over. There has been a recent decision to the effect that trustees have a power to appropriate investments to answer shares in certain cases, even without any special power to that effect being conferred upon them (*In re Nickels; Nickels v. Nickels*, 1898, 1 Ch. 630).

§ 10. *Power to appoint new Trustees.*

A trustee may die, he may become bankrupt, he may go to reside permanently in some foreign land, he may become lunatic, or he may wish to be discharged from his trusteeship: in all of these cases it may be desirable to appoint a new trustee in his place.

In this, as in many other matters, the Legislature has come to help the preparation of settlements, and has given a statutory power of appointing new trustees (Trustee Act, 1893, s. 10). It is, therefore, only necessary to provide that the power of appointing new trustees shall be exercisable by the husband and wife during their joint lives, and by the survivor during his or her life, and afterwards in manner provided by law. The law, then, provides that if there is not any one nominated by the settlement, and able and willing to act, the surviving trustees or trustee, or the representatives (*i.e.* executor or administrator) of the survivor, may appoint new trustees.

As soon as new trustees are appointed they become entitled to have all the trust-property vested in them. It is generally possible to find all the parties whose signatures are required for transferring the trust-property to the new trustees, and satisfy them that it is subject to the trusts of the settlement, and that the new trustees have been properly appointed new trustees thereof. But this cannot always be done, and, in such cases, it becomes necessary to apply to the High Court of Justice, and that Court has power to do all things necessary for vesting the property in the new trustees. The High Court has also power to appoint new trustees in any case.

If a trustee desires to be discharged, and there are two or more other trustees, he may be discharged without the appointment of a new trustee in his place, provided that the other trustees, and the persons or person having the power to appoint new trustees, consent thereto. But, unless these conditions are fulfilled, a trustee cannot be discharged from his office without having a new trustee appointed in his place.

An appointment of new trustees is always made by deed. In preparing the deed, it is necessary to consider what are all the facts which the new trustee ought to know, in order to be able to tell (1) of what the trust property consists; (2) what trusts affect it; and (3) who take the benefit of such trusts, and in what shares and for what interests. All such matters should be stated in the deed appointing the new trustee, so

that any one reading the settlement and the deed appointing new trustees, might learn therefrom how to answer all these questions.

§ 11. *Other kinds of Personalty.*

At the commencement of this chapter we supposed that the parties were entitled to consols and railway shares, both of which pass by transfer, and would be transferred into the names of the trustees. But they might have other kinds of property. Either party might have bonds payable to bearer and wish to settle them. These would be placed in charge of the parties' bankers, with written directions from the former owner to the bankers to enter them in their books as held on behalf of the trustees, and with written directions from the trustees to the bankers to place the interest from time to time to the account of the husband or wife according to the trusts and the mode of arrangement adopted as already mentioned. The settlement would then recite that the bonds had been deposited with the trustees, or with the bankers on behalf of the trustees, and would contain declarations respecting the bonds and their income similar to the declarations already mentioned concerning the shares and consols.

If either party wished to put into settlement bonds which required endorsement for their alienation, an endorsement would be made upon each bond in favour of the trustees and signed by the former owner, and the bonds would be otherwise dealt with in the same manner as bonds payable to bearer.

Sometimes one party is entitled to a reversionary equitable interest in some property: such as a child would have if a father left property to trustees on trust to pay the income to his wife for life, and afterwards to divide the property equally amongst his children. If it is desired to settle such an interest, the party entitled to it would, by the settlement itself, be expressed to assign it to the trustees of the settlement; and these trustees would be directed to wait until it fell into possession on the mother's death, and then receive the money

or property representing it from the prior set of trustees, and thenceforth hold such money and property upon the trusts declared by the settlement. Furthermore, it would be necessary that notice of this assignment should be given to the prior trustees of the property as already explained in the chapter on equitable interests.

If one of the parties was entitled to a mortgage, and wished to settle it, he would execute a deed by which he would assign the mortgage-debt, and convey the mortgaged property to the trustees of the settlement, without mentioning any trusts; and the settlement would recite this transfer, and declare the trusts of the interest and the capital money, like the trusts of the income and capital of the consols and shares above described. It would, of course, be necessary to give notice of this assignment to the mortgageor, to let him know that he must thenceforth pay the interest, and eventually the capital also, to the assignees; and, as this assignment was being executed entirely for the convenience of the mortgagee, the mortgageor could not be asked to pay any of the costs of it. If the mortgageor ever repaid the capital, the assignees of the mortgage would re-convey the property to him, and no notice of the settlement would appear on his title-deeds. This contrivance is called "keeping the settlement off the title." Sometimes new trustees are appointed of a settlement, while some of the trust-funds are invested on a mortgage. When that is done the old trustees execute a deed, whereby they declare that they are trustees of the mortgage-money for the new trustees, and then assign the money to them and convey the mortgaged property to them. Any lawyer reading such a deed feels that it is a moral certainty that there is an undisclosed trust; but it is understood to be proper, in such a case, to keep the settlement off the title, and, in the eye of the law, any person dealing with the trustees or the mortgageor is exempt from any liability to inquire what the undisclosed trust is. If, after the execution of a settlement any of the trust-moneys are lent on mortgage, the settlement would be kept off the title of the property in

like manner. On the face of the mortgage, the trustees would appear to be absolute owners of the money.

Sometimes one of the parties is entitled to some house or land, freehold or leasehold, and it is desired to include it in the settlement. This would be effected by a separate deed, conveying the property to the trustees of the settlement upon trust to sell the property and to hold the proceeds of sale, and the rents and profits of the property until sale, upon the trusts declared by the settlement, which would be described as "another indenture already prepared and engrossed, and intended to bear even date with these presents." The deed thus conveying the property, would contain powers for the trustees to lease the property and to give a receipt to the purchaser on any sale, without any necessity for him to ask to see the settlement itself, and a power to appoint new trustees. The trust for sale of the property would be expressed to be with the consent in writing of the husband and wife and the survivor, during their joint lives and the life of the survivor, and afterwards at the discretion of the trustees. The settlement would recite this contemporaneous deed, and direct the trustees to apply the rents and profits of the property until sale, like the income of the other settled property, and the proceeds of any sale like the capital. Under these deeds the property might remain unsold until the whole of the settled fund became divisible. If freehold property is thus settled upon trust for sale and investment of the proceeds in personalty, the beneficial interest in it devolves as personalty. If the property were sold, the purchaser would have no occasion to examine the settlement; and, on the other hand, the parties claiming under the settlement would not require the contemporaneous deed after the sale had taken place. On a sale, therefore, the trustees would retain the settlement and hand the contemporaneous deed to the purchaser, and neither party would thereafter have any occasion to trouble the other by asking for production of any deeds.

If any of the trust-money was laid out in the purchase of

land after the execution of the settlement, the settlement would be kept off the title in like manner; the property would be conveyed to the trustees simply, and they would execute another document, declaring that it was purchased with trust-money and should be held accordingly.

If copyhold property were being included in a personalty settlement the property would probably be surrendered to the use of the trustees, and they would be admitted without any trust being mentioned on the Court Rolls. It would be treated like stock in the funds, in fact, and the settlement would recite the surrender and declare the trusts of the property.

In making our sketch of a settlement at the beginning of this chapter, we supposed a case of a husband owning some shares, and a wife some stock in the funds, so as to make the matter as simple as possible. But it often happens that each party is entitled to a number of items of property of different sorts, which would be vested in the trustees in the different ways above mentioned, and it is then convenient to append two schedules to the settlement: one containing a list of all the property settled by the husband, and another containing a list of all the property settled by the wife; and we have already mentioned that it is convenient to specify in a schedule all the investments in which the trustees are authorized to invest any of the trust-funds, so that, in such a case, there would be three schedules to the settlement.

A settlement of land requires only a 10s. stamp, whatever the value of the land may be; but a settlement of any definite amount of money, stock, or security, bears an *ad valorem* stamp of 5s. per £100 of the property settled (Stamp Act, 1891, Sched. Settlement).

We see that when land is settled on trust to be sold, the beneficial interest in it devolves like personalty. Similarly, if money is settled on trust to be laid out in the purchase of land, the beneficial interest in it devolves like realty. This is called the "doctrine of conversion:" equity considers that as done, which ought to be done.

CHAPTER XXII.

WILLS.

It is not wise for any person, who has any property, to be at any time without a will. We mentioned in an earlier chapter, on real and personal estate (Chap. XIX.), that there were different rules for the descent of ordinary freehold land, gavelkind land, and borough-English land, and that many different customs existed affecting the descent of copyhold lands, and that personal estate was subject to rules of distribution different from the rules of the descent of real estate. It can very seldom happen that these rules would work out the result which an owner of property would wish to come to pass if he died, and there are many cases also in which difficulties would occur in the mechanical division and management of property, apart from the devolution of the beneficial interest. If a man died leaving no widow and no relatives, except daughters, it is true that all his land and money would be divisible equally between them. But difficulties might then arise as to the mode of division, and these might be obviated if he left his property to trustees upon trust to sell and divide it.

Difficulties also occur when any parties who succeed to property are minors; and in every case in which a man dies intestate, the question arises who should be appointed to represent him, to get in his property, pay his debts, to pay the duties payable on his death, and to divide the balance of his estate amongst the parties entitled thereto. At the moment of his death there is no one designated for this

purpose; there is no one possessing the right or owing the duty of taking care of his belongings and receiving (debts due to him; no one whose duty it is to see to his funeral. All these things have to be done by the parties close at hand, trusting to their being ratified afterwards. If a man merely makes a will, whereby he appoints executors and does nothing else, he saves a vast amount of trouble. The executors at once derive an authority from the will, and are able to act upon that authority, although it will be their duty in due course to "prove the will," as it is called, at some probate registry, and thus obtain an official ratification of their appointment. The executors are the proper persons to order the funeral: all the property of the deceased, except copyhold land, becomes at once vested in them (Land Transfer Act, 1897, s. 1); they have the right and the duty to take care of it; it will be their duty to apply it in paying for the funeral of the deceased, the costs of proving his will, the duties due to the Crown, and the debts of the deceased; and then to distribute the surplus as directed by the will, or, if the will is silent, according to the legal rules. It will indeed be their duty to prove the will, as it is called, as soon as reasonably practicable: they will have to take the will to Somerset House or some local Probate Registry, give evidence that the testator executed it, pay some fees and duties, and ask for an official grant to them of the right to administer the estate. But they act as executors before making this application; and, when they apply, the grant will be readily made to them; they have a right to it because the testator has appointed them executors, and they will not be required to give any security for the performance of their duties. The original will will be preserved at the Probate Registry, and a copy of it, written on parchment, will be made and delivered to the executors, with a memorandum attached, bearing the official seal of the registry, naming the executors who apply for the grant, and stating that the administration of the estate of the testator is committed

to them. This is called the "probate," or "probate-copy," of the will.

The case is different when a party dies intestate. There is then no representative of the deceased until some one has been legally appointed "administrator," as it is called; and it will be necessary to apply at one of the probate registries to procure such an appointment. There is, indeed, a rule that a husband is entitled to be appointed administrator to his wife, at least, if there has not been a separation between them; but in other cases there may be a dispute between two or more applicants for administration. Furthermore, an administrator has always to execute a bond for securing the proper administration of the estate, and a husband has to procure one surety to his bond, and any other administrator has to procure two sureties. These sureties undertake a very substantial liability: they might, indeed, be called upon to make good the full value of the estate, if the administrator absconded with it. The difficulty of procuring the sureties for an administration bond is sometimes met by applying to a guarantee company to undertake the liability; but, of course, such a company makes a charge for running the risk, and this charge has to be paid by the administrator.

The above remarks will show that it is desirable that every owner of property should make a will and appoint executors, in order to ensure the preservation of his property and its proper division amongst the persons taking it. It must also almost always happen that it is desirable to make a will in order that the property may go to the right parties. Nearly every one has some friends and dependents outside the circle of heirs and next-of-kin, whom he ought to remember, and in most cases, also, the legal rules of heirship must prove inequitable. Hence, as death may come at any moment, it may be broadly laid down that an owner of property should never be without a will.

We may next say that no one, who is not a lawyer, should

attempt to make his own will. The fee charged by a solicitor for making an ordinary will is very small, while much greater cost may be entailed if a solicitor is not employed. A testator, who dispenses with a lawyer, may leave a will ambiguously expressed, or indeed, he may fail to make a valid will, and merely leave an invalid document which would have no legal effect. Some books profess to give forms of wills for testators to fill up without any lawyer's aid, but the use of these is dangerous. If in any case a will is required, and no lawyer can be found, it is better to abstain from using forms containing legal words of which the meaning is not clearly known to the person preparing the will. The best advice which can be given for such a case is somewhat as follows. The will should begin with the sentence "I, A. B., hereby revoke all wills heretofore made by me, and declare this to be my last will." These words should be used, even if the testator has never made a will before, in order to save his executors the trouble of inquiring whether he has or has not made one. The testator's name and address should be inserted where we have placed the letters A. B. Then a clause should follow, saying, "I appoint C. D. and E. F. to be my executors." The names and addresses or descriptions of the executors should be inserted where we have placed the letters C. D. and E. F. It is sufficient to appoint one executor, but it is better to appoint two or more, for the same reason that it is unwise to leave trust-property under the control of a single trustee. The testator should then remember that the persons whom he names as executors may decline to accept the office; and, in order to induce them to undertake it, it may be well for him to add, "I give to each of my aforesaid executors, who shall accept the office, a legacy of £ for his trouble." Even where a testator knows that an executor will accept the office, it is merely fair to give him a legacy, for every executor is sure to have his time and energy substantially taxed in performing the duties of the executorship, and deserves some remuneration for his services. After these preliminary

sentences, the testator should remember that all his property, except copyhold land, will become vested in his executors (Land Transfer Act, 1897, s. 1); and they will be bound, in the first place, to pay the costs of his funeral, the expenses of proving his will, the duties payable to the Crown on his death, and all his debts; and his copyhold lands will also be liable to be sold to defray these charges. He cannot interfere with this result by his will, but he may specify the order in which his different assets should be applied; and he can dispose of his assets remaining after all these liabilities have been discharged. If there is any chance of his copyhold lands being required to discharge the liabilities of his estate, it would be well for him to say, "I authorize my executors to sell my copyhold lands, and receive the rents and profits of them until sale, and deal with such rents and profits and the proceeds of sale as part of my general estate." He will then have put his whole estate under the control of his executors, and it may be well for him to add, "I direct my executors to hold all my estate on trust for sale, to the intent that all may be considered personalty, and may be readily divisible." Then will come the disposition of the beneficial interests, and here the testator, having no lawyer at hand, should make his wishes as simple as possible. He may give legacies of definite sums of money to various people, and give the rest of his property to one person, or to several in equal shares, or to his wife for life, and after her death, to his children in equal shares. He cannot hope to effect anything very elaborate without legal aid; but, by limiting his dispositions to effecting his main intention, he may ensure that that shall be carried out. Finally, his will should be properly executed. He should sign it in the presence of two witnesses, and they should sign it as witnesses in his presence, and in the presence of each other (Wills Act, 1837, s. 9). The testator and the two witnesses should all be present together while all the three signatures are made. The testator should sign the will immediately at the foot of the writing without leaving any interval wherein additions might be

made; and it is desirable that an attestation clause should be written just below the will for the witnesses to sign. The attestation clause should mention that the will was signed by the testator in the presence of both the witnesses, and that they each signed in his presence and in the presence of the other. The following words form a sufficient attestation clause to a will: "Signed by the said A. B., in our presence, and by us in his and each other's." If the witnesses sign an attestation clause of this nature, no further evidence of the due execution of the will will be required when the executors take it in for probate; but, if the attestation clause does not mention the required particulars, the Court, before granting probate, will require the evidence of one or both of the attesting witnesses to show that the will was duly executed.

A will made without legal aid should be written on one piece of paper. There is no objection to both sides of the paper being written on; that course should be preferable to writing on two pieces. The side first written on should be so filled as to make it impossible for any addition to be made to it. It is better to get the will on one side of a sheet of paper, if possible. It is usual to mention, at the end of the will, the date on which it is signed. The final sentence generally runs: "In witness whereof I have hereunto set my hand this day of , 18 ." Such a clause is called a "testimonium" clause. It is best to conclude a will with such a clause, so that the will may show the date of its execution, and, if a testator leaves two or more wills, it may be readily seen which is the last.

The witnesses to the will should be independent witnesses, that is to say, they should be persons who do not take any benefit under the will, either directly or indirectly. If a will is witnessed by any person to whom any gift is expressed to be made in it, or to whose wife or husband any gift is expressed to be made in it, such gift fails, and the rest of the will takes effect without it (Wills Act, 1837, s. 15).

A few of the phrases which have been used in this chapter require explanation. We have said that on the death of a testator all the property of the deceased, except copyhold lands, vests in his executors. The executors are entitled to take possession of the house in which he lived, and all its contents, including any money in the house. They are also entitled to his balance at any bankers, but they could not recover the balance from the bankers until they had proved the will. In general, it is necessary for executors to produce the probate of the will, in order to get judgment in any action to recover any property of the testator which has not been in their possession. They are unable, therefore, to obtain judgment in any action for any debt due to the testator, until they have proved the will; but if the testator's bankers, or any debtor to the testator, is willing to pay money to the executors before probate of the will, their receipt is a good discharge. When a testator owns stock or shares registered in books at the Bank of England, or in the books of any company, it becomes necessary for the executors to forward the probate to the Bank or the office of the company, for it to be registered there. Before this is done they cannot sell the stock or shares, and neither the Bank nor any company will pay them the dividends; but after the probate has been registered, the dividends will be paid or sent to them, and they will be able to sell the stock or shares.

In the case of bonds payable to bearer, which come to the executor's hands, they can of course sell them at once; but if such bonds are in the hands of the testator's bankers his executors cannot recover them, or their dividends, from the bankers until they have proved the will. Very often bankers do not stand on their strict rights in these matters in the case of customers who are well known to them, but arrange for the supply of money to executors before the will is proved.

Executors cannot sell either the freehold or leasehold land of their testator until they have proved his will, nor can they

recover the rent of it prior to probate ; but if the tenants are willing to pay the rent to the executors, the receipt of the executors is a good discharge.

Where an administrator is appointed, he stands in the same position as an executor ; but, where a person dies intestate, there is no one possessing authority to take possession of his property until an administrator is actually appointed.

INDEX OF SUBJECTS.

A.

- Abstract, meaning of, 127
length of, 127
verification of, 127
- Acceptance in blank, meaning of, 46
- Acceptance of bill, meaning of, 44
- Acceptor, meaning of, 44
- Accommodation bills, what are, 46
- Account of payee, 26
- Accounts,
should be kept by tradesmen, 55,
77
and trustees, 79, 161
not evidence, in general, 77
may be called for, 55, 77
accountable parties should keep
strictly, 79
after death of book-keeper, 79
with bankers, how settled, 34
- Action, forms of,
for goods bargained and sold, 62
of detinue, 62
of trover, 63
for money had and received, 69
for deceit, 69
- Ad valorem duty, meaning of, 99
- Address,
of purchaser of shares, required,
101
- Administrator, meaning of, 178
appointment of, 178
- Adults, meaning of, 166
- Advance of children's shares,
under intestacy, 153
under a settlement, 158, 166
clause authorizing, 166
- Advertisement,
may imply a warranty, 75, 76
- After acquired property,
covenant to settle, 169
- Agreement to sell,
distinguished from actual sale,
57
- Alienate, meaning of, 24, 103
- Alienee, meaning of, 24, 105
- Alienor, meaning of, 24, 105
- Alternative remedies,
procedure in case of, 73
- Annuities,
meaning of, as applied to public
funds, 81
- Anticipation, restraint on, 161
- Appointment among children, power
of, 163
operation of, 163
- Appointment of new trustees, 170
- Apportionment of income, 161
- Appropriation of goods for purchaser,
56
- Appropriation of payments, 40
payer may direct, 40
between banker and customer,
40
- Articles of association,
meaning and effect of, 96
- Assets, meaning of, 28, 152
- Assign, meaning of, 24, 112, 125
- Assignee, meaning of, 24, 112, 125
- Assignor, meaning of, 24, 112, 125
- Assignment, meaning of, 112

Attestation clause, meaning of, 99
of will, form of, 181

Attorney, meaning of, 90
power of, meaning of, 90

B.

Backing a bill, 47
case of obtaining signature by
fraud, 47

Bank-notes, law of, 8
duties on, how paid, 11
form of, 12, 18
transfer of, 13
title to, 14
effect of stopping, 15
effect of loss of, 15
effect of cutting in half, 16
whether subject to Statutes of
Limitation, 17

Bank of England,
privileges of, as to issuing bank-
notes, 9
notes a legal tender, 11
notes never re-issued, 12

Bank-charter, terms of, 10

Bankers, position of, 8
exchange of cheques by, 27
days and hours of business of, 34
cash coupons, 108

Bank-rate, meaning of, 9

Barring an entail, mode of, 147, 148

Beneficial interests, meaning of, 111
See EQUITABLE INTEREST.

Beneficiaries, meaning of, 160

Bill of Exchange, meaning of, 21, 44
usage with respect to, 44, 45
negotiable, 46
employed by swindlers, 46
for borrowing money, 46
effect of taking for price of goods,
55

Bill of lading, meaning of, 45

Blank: *See* ACCEPTANCE, CROSSINGS,
ENDORSEMENT.

Bonds, 107

Borough-English, custom of, 153

Brokers, functions of, 87
required for sale of stock in
Funds, 91, 92
sale of shares through, 101-105

Building agreement, meaning of, 122

Building lease, meaning of, 122

C.

Caveat emptor,
when rule applies, 65

Certificate of shares,
first issue of, 98
given up on transfer, 100

Cestui que trust, meaning of, 160

Charities, meaning of, 146

Charter of feoffment, meaning of, 120

Chattels, real and personal, meaning
of, 151

Cheques, law of, 19
meaning of, 19
form of, 19
date of, 21
amount of, instances of altering,
22
payable to bearer, 22, 25
pass by delivery, 24
payable to order, 22
endorsement of, 25
payable to payee simply, 22, 25
law as to crossing, 25, 26
time for presenting, 27
giving change for, 33, 35
payment of debt by, 33, 35
practical rules in dealing with, 35

Clearing-house, meaning of, 27

Coinage, right of, 1
case of silver, 4
offences in respect of, 6

Coins, foreign, 4
light, 5
calling in, 6

Colonial and other bonds, 107

Colonial mints, 5

Colonial stock, meaning of, 108

Company, meaning of, 94
mode of management of, 95
purpose of, 96

Completion of contract for sale of
lands, 128

Composition,
when a satisfaction of a debt, 41

- Compounding for stamp-duties on sale of registered bonds and stock, 109
how information obtainable, 109
- Conditions of sale, nature of, 126
- Consideration,
required for a promise, 70
apportionment of, 104
- Consignor, meaning of, 44
- Consols, meaning of, 80
origin of word, 84
- Consolidated annuities, meaning of, 81, 84
- Consolidated fund, meaning of, 84, 86
- Constructive notice, 131
- Contingent share, meaning of, 165
- Contract-note, meaning of, 101
cases of, 101, 103
- Contract to buy land,
should not be signed without legal advice, 133
- Conversion of land into money, 160, 174, 175
- Converted, meaning of, 160
- Convey, meaning of, 24, 121, 125
- Conveyancer, meaning of, 121
- Conveyancing, meaning of, 121
- Copyholds, account of, 114
who entitled to timber on, 114
alienation of, 116
stamp-duties on, 116
searching Court Rolls for, 133
mode of mortgaging, 139
and transferring mortgages of, 140
descent of, 153
settlement of, 175
- Counsel, meaning of, 126
- Counterfoil, meaning of, 20
- Counterpart, meaning of, 125
- Coupons, meaning of, 107
- Court Roll, meaning of, 114
- Coverture, meaning of, 166
- Crossed cheques, law as to, 25, 26
- Crossing in blank, meaning and effect of, 26
- Crossing specially, meaning and effect of, 26
- Cum dividend, meaning of, 106
- Current, meaning of,
in case of cheque, 29
notes and bills, 43, 44, 46
- Current account, meaning of, 9
- Curtesy, meaning of, 152
- Customary Courts, practice as to, 116
- Customs affecting freehold land, 153
and copyhold, 153

D.

- Damages, assessment of,
under contract to sell goods, 59
under sale of goods, 62
- Damages beyond actual loss,
when recoverable, 33
- Dealer or jobber, 101, 106
- Debentures, nature of, 97, 98
- Debenture stock, nature of, 98
- Deeds: *See* TITLE-DEEDS
- Default of children,
devolution of settled property on, 167
- Deferred shares, meaning of, 97
- Delay, effect of,
in presenting cheque, 28
- Delivery, passing by, meaning of, 13, 24
- Delivery of document, meaning of, 100
- Delivery of goods,
payment due on, 57
- Demise, meaning of, 122
- Deposit account, meaning of, 9
- Deposit on agreement for sale, 118, 127
- Deposits in savings banks, 49
- Description in contract,
goods must answer, 65
- Determine, meaning of, 122
- Discounting bill, meaning of, 45
- Discounting accommodation bill, 46
- Dishonour, meaning of, 44, 24
of cheque, action for, 33
- Dishonour in the case of cheques,
notice of, 31

Dividends, meaning of, 83
 dates of payment on government funds, 83

Dividend warrant, meaning of, 90, 105

Dividends, mode of payment,
 on government funds, 89
 on shares, etc., 105

Dividends, right to,
 as between vendor and purchaser,
 106

Dower, meaning of, 152

Drawee and drawer, meaning of, 23, 44

Drawing bonds, 107

E.

Embezzling trust-funds, meaning of,
 156

Endorse, meaning of, 17, 25

Endorsee, meaning of, 25

Endorsement,
 of bank-notes, effect of, 17
 in blank, meaning of, 25
 special, meaning of, 25
 to endorsee simply, 25
 of cheque, effect of, 31
 of bill, 47
 obtained by fraud, 47

Enfranchisement of copyholds, 118

Engrossed, meaning of, 128

Enquiries of trustees, rules as to, 112

Enquiries on property purchased, 130

Enrolled, meaning of, 147

Entailed, meaning of, 147

Equitable interests, account of, 111
 alienation of, 112
 notice to trustee required, 112
 settlement of, 172

Equitable tenant for life,
 meaning of, 160

Equity of redemption, meaning of, 137

Escrow, meaning of, 129

Escuage, meaning of, 119

Essence of the contract, meaning of,
 128

Estate tail, meaning of, 147

Ex dividend, meaning of, 106

Execution of transfer, mode of, 99, 100

Executors,
 desirability of appointing, 177
 powers of, before probate, 177, 182

Expectant share, meaning of, 165

F.

False representation distinguished
 from warranty, 73

False statement respecting goods,
 effect of, 69

Feoffment, meaning of, 120

Feudal system, 119
 abolished in 1660, 120

Filed, meaning of, 147

Fine on alienation of copyholds, 115

Foreclosure, meaning of, 137

Foreign coins,
 not a legal tender, 4

Forgery of endorsement, effect of, 32
 of trade-mark, effect of, 68
 of coins, 6

Freehold land, account of, 119
 alienation of, 120

French pennies,
 value of, 4

Fully paid-up shares, meaning of, 95

Funds: *See* PUBLIC FUNDS.

G.

Gavelkind, custom of, 153

Goods and chattels, meaning of, 151

Goschens, meaning of, 81

Grant, meaning of, 24, 121, 125

Grantee, meaning of, 24, 121, 125

Grantor, meaning of, 24, 121, 125

Ground-rent, meaning of, 123

Guarantee of endorser, extent of, 31

Guarantee of title, extent of, 32

H.

- Heriot, meaning of, 115
- Hotchpot, meaning of, 153
- Hotchpot clause,
operation of, 164

I.

- Improved ground-rents, meaning of,
124
- Incorporated, meaning of, 94
- Incorporation, how obtained, 94
effect of, 94
- Income,
trusts of, in settlement, 160
arrangements respecting, 162
- Income tax, account of, 141
acts relating to, 145
- Incumbrance, meaning of, 134
- Indorse : *See* ENDORSE.
- Induction of parson, 121
- Infants, meaning of, 166
- Inhabited house duty, 142
- Injunction, meaning of, 63
- Inquiry : *See* ENQUIRY.
- Inspection of goods,
effect of affording to purchaser, 65
exceptions to sale, 66
- Intention, presumed from actions, 73,
74
- Intestate, meaning of, 113
- Investment, how made,
in government funds, 87, 93
- Investments,
power to vary, 159
statutory power as to, 159
broker's lists of, 159
- I.O.U., meaning of, 48
- Issue department of Bank of England,
10

J.

- Jobbers, functions of, 88
mode of dealing with, 88, 101

- Jobbers, also called dealers, 101, 106
dealings with, 102, 103
- Jointure, meaning of, 149

L.

- Land, meaning of, 115
- Land tax, account of, 142
- Landed estates, mode of settling, 146
- Latent defects, meaning of, 69
effect of, 68
- Lay impropiator, 144
- Lease affecting property,
inspection offered to intending
purchasers, 131
- Leasehold ground-rents, meaning of,
124
- Leaseholds, account of, 122
alienation of, 125
mode of mortgaging, 139
- Legal tenant for life, meaning of, 160
- Legal tender,
in coins, 2
in bank-notes, 11
- Lessor and lessee, meaning of, 122
- Lien, meaning of, 58
- Light coins, 5
- Limit of deposits in savings banks, 53
reason for, 50
- Limitations, Statutes of,
meaning of, 17
whether bank-notes subject to, 17
applicable to cheques, 28
- Lis pendens, meaning of, 132

M.

- Maintenance clause,
operation of, 165
- Majority, meaning of, 166
- Marginal bill, meaning of, 45
- Market overt,
law as to, 63
meaning of, 64
- Married woman,
can have an inalienable income,
162

Maturity, meaning of, 44

Maxims,

Caveat emptor, 65

Ex nudo pacto non oritur actio, 71

Memorandum of association,
meaning and effect of, 96

Mesne lords, meaning of, 120

Middleman, meaning of, 124

Minors, meaning of, 166

Mistake of purchaser no ground for
relief, 66

Modus, meaning of, 144

Money, law of, 1

Mortgagee, meaning of, 135

Mortgageor, meaning of, 135

Mortgages, account of, 135

transfer of, 138

of leaseholds and copyholds, 139

settlement of, 173

of trust-monies, 173

N.

Name day, meaning of, 101

Negotiable, meaning of, 46

bills of exchange are, 46, 48

bank-notes are, 14, 48

cheques are, 29, 48

Not negotiable, effects of these words,
on a cheque, 26

Notary, meaning of, 47

Notice: *See* PURCHASER, DISHONOUR.

Notice of assignment of equitable in-
terest,

law as to, 112

Notice of failure to send receipt for
deposit in savings bank, 51

Notice of transfer of mortgage, 139, 173

Nudum pactum, meaning of, 71

O.

Occupation lease, meaning of, 122, 125

Old quarter-days, 83

Overdue, meaning of,
in case of cheque, 29

Owner,

definition of, in Tithe Acts, 144

P.

Parol, meaning of, 71

Parol evidence,

inadmissible against writing, 71

Particulars of sale, nature of, 126

Pass by delivery, meaning of, 13, 24

Pass-books, meaning of, 34

Patent defect, meaning of, 69
effect of, 69

Paving rates, 145

Payee, meaning of, 23, 44

Payment for goods,
usually due on delivery, 57

Payments, law as to, 37
appropriation of, 40

Pepper-corn rent, meaning of, 123

Perpetuities, meaning of, 146

Personal estate,

distinguished from real, 151

Personalty settlements, 155

Piecemeal payment of debts,
law as to, 3

Pin-money, meaning of, 149

Portions, portioners, meaning of, 149

Post-dividend warrant, 91

Post-office savings banks, account of, 49
investment in funds through, 93

Power: *See* APPOINTMENT, 163

Power of attorney, meaning of, 90
to receive dividends, 90
to sell stock, 91
stamps on, 92

Preference shares, meaning of, 97

Preferred shares, meaning of, 97

Presentment of bill, 45

Presumption that every man intends
the natural result of his actions,
73

Probate, meaning of, 178

Promise,
 consideration required for, 41, 70
Promissory note, meaning of, 43
 effect of taking, for price of goods,
 55
Property passing, meaning of, 57
Proving a will, meaning of, 177
Prove, meaning of, 29
Provisions, sale of,
 law as to quality, 66
Proviso for redemption, meaning of, 135
Proxy, meaning of, 96
Public funds, account of, 80
 names of, 80
Purchase, so many years,
 meaning of, 123
Purchaser,
 must inspect goods, when shown
 to him, 65
Purchaser for value without notice of
 any defect in title,
 position of, 29
Purchaser's remedies,
 under contract to sell goods, 59
 under sale of goods, 62
Purpose,
 goods must be fit for their, 65

Q.

Quality of article,
 liability of seller for, 64
Quit-rent, meaning of, 115
Quo usque: *See* SEIZURE.

R.

Rack-rent, meaning of, 122
Rates and taxes, account of, 141
Rates, account of, 145
Real estate,
 distinguished from personal, 151
Realty settlement, meaning of, 150
Reasonable time,
 for presenting a cheque, 27
 for giving notice of dishonour, 31

Receipt,
 when liable to stamp-duty, 37
 when demandable, 38
 in case of sums under £2, 38
 preservation of, 39
 for deposit in savings bank, 51
Receipt in deed, effect of, 129
Reckless statements, effect of, 69
Rectorial tithes, 144
Redemption action, meaning of, 138
Reduced annuities, meaning of, 81, 85
Régister of shareholders, 94, 98
 of stock and debentures, 98
 of Colonial bonds, 108
Registered, meaning of, 147
Registered and inscribed bonds, mean-
 ing of, 108
Registration of transfer, 100
Registry of incumbrances, 132
 of deeds, 133
Remoteness, meaning of, 146
Repairing lease, meaning of, 122
Representatives, meaning of, 171
Requisitions on title, 128
Return frontage, meaning of, 145
Risk,
 how undelivered goods stand, 56

S.

Sales of goods,
 law as to, 54
 four forms of, 54
 (1) delivery and payment, 54
 (2) delivery without payment, 55
 (3) payment without delivery, 56
 (4) neither payment nor delivery
 56
 distinguished from agreement to
 sell, 57
 vendor's remedies under contract
 for, 58
 purchaser's remedies under con-
 tract for, 59
 ditto under actual sale, 62
 requisites for fourth form of sale,
 64
Sales of land
 mode of effecting, 126

- Sans recours* effect of words, 31
- Satisfaction, entry of,
in case of mortgage of copyholds,
139
- Satisfaction of debt,
by smaller payment, 41
by release under seal, 41
by other means, 41, 42
- Savings banks, account of, 49
Schedule, meaning of, 121, 175
- Seutage, meaning of, 119
- Seal of company,
nature of, 94
- Sealing, requisites of, 100
- Searches against vendor of property,
132
- Seizure quousque, meaning of, 115
- Settlement,
how made of various properties,
172
kept off title of land, 173, 174
of realty, 146
of personalty, 155
desirable, 155
preparation and execution of, 157
contents of, 158
- Settling-day, meaning of, 88, 101
- Shares in companies,
account of, 94
different kinds of, 97
register of, 98
sale and transfer of, 99, 101
may be sold by word of mouth, 101
- Sight, meaning of, in bills of exchange,
44
- Signatory, meaning of, 100
- Signature, what sufficient, 50, 100
- Signature of purchaser,
not required for stock in Funds,
92, 104
required for shares in companies,
93, 104
desirable, 105
- Sinking Fund, meaning of, 86
- Solicitor required,
for sale of land, 126
for purchase by private contract,
133
for preparing a settlement, 157
for making a will, 179
- Special crossing, meaning of, 26
effect of, 26
- Special endorsement,
meaning of, 25
- Specific recovery of goods,
law as to, 62
- Splitting the ticket, meaning of, 104
- Stamp-duty,
on bank-notes, 11
on cheques, 19
on receipts, 37
on promissory notes, 43
on bills of exchange, 44
on transfers of shares, 99, 102, 103
apportionment of, 104
on bonds payable to bearer, 108
none on sale of ditto, 108
on transfer of registered bonds,
109
on Bank of England stock, 110
on leases, 125
on mortgage, 140
on settlements, 175
- Statute, meaning of, 166
- Statute of Frauds, provisions of,
as to sale of goods, 64
- Statutory power, meaning of, 166
- Steward of manor, meaning of, 114
- Stock-brokers,
monthly lists issued by, 94, 109
- Stock Exchange,
mode of dealing on, 101, 103
- Stock in the Funds, meaning of, 82
mode of purchase and sale of, 87,
91
not more than four joint holders
allowed, 93
- Stock-receipt, meaning of, 89
- Stoppage in transitu, meaning of, 58
- Stopping,
bank-notes, 15
cheques, 30
- Subinfeudation, meaning of, 119
stopped in 1290, 119
- Succession duty,
payable on settled property, 167
Sui juris, meaning of, 166
- Superior lease, meaning of, 124

T.

- Tail: *See* ESTATE TAIL, 147
- Tenant, meaning of, 115
- Tenant in tail, meaning of, 147
- Tenant for life, meaning of, 146, 160
may sell life-interest, 161
position of married woman, 161
- Tender, law of, 2
effect of refusal of, 3
- Tenement, meaning of, 115
- Terre tenant, meaning of, 116
- Testator, testatrix, meaning of, 113
- Testimonium, meaning of, 181
- Timber,
what trees are, 114
on copyholds belongs to lord, 114
- Time: *See* ESSENCE.
- Tithes, account of, 143
payable by owner, 144
- Title, law respecting,
in the case of money, 14
in the case of bank-notes, 14
in the case of cheques, 29
to lands, how shown, 127, 132
production of deeds necessary, 127
to goods, 63
- Title-deeds,
production of, 127
possession of, material, 129
mortgagee should take, 136
- Title of honour,
devolution of land with, 146
- Trade description,
implies warranty, 67
meaning of, 68
- Trade-marks,
imply warranty, 67
effects of forging, 68
- Tradesman, duties of,
skill required and care by, 70
in respect of accounts, 55, 77
- Transfer of shares,
form of, 99
mode of, 99
execution of, 100
registration of, 100

- Transfer of shares,
how effected through Stock Exchange, 101
prepared by vendor's broker, 102
- Transfer, meaning of, 24, 105
- Transferee, meaning of, 24, 105
- Transferor, meaning of, 24, 105
- Transferor by delivery, meaning of, 32
- Trial of the pyx, 2
- Trustees,
appear as absolute owners, 111
notice of assignment to be given to, 112
not bound to answer enquiries, 112
or liable for mistakes in answer, 112
four desirable in first instance, 156
powers given to, by settlement, 169
appointment of new, 170
- Trusteeships,
a social duty, 156

U.

- Undelivered goods,
at whose risk they stand, 56
- Under-lease, meaning of, 124
- Undisclosed trust, meaning of, 173

V.

- Voucher, meaning of, 42
- Vendor's lien, meaning of, 57
- Vendor's remedies,
under contract to sell goods, 58
under sale of goods, 62
- Verification of abstract, meaning of, 127
- Vested share, meaning of, 165
- Vicar, meaning of, 143
- Vicarial tithes, 144

W.

- Warrant, meaning of, 70
- Warranties of goods, 64-76
consideration required for, 71
what statements are, 73

- Warranty,
 distinguished from false representation, 73
 implied in a receipt, 75
 and in an advertisement, 75, 76
- Wills, account of law of, 176
 desirability of making, 176
 mode of proving, 177
 directions for making, 179
 attestation of, 180
- Withdrawals from savings banks, 52
- Witness,
 caution as to signing as, 47
- Witness to will, effect of gift to, 181
- Writing, when required for
 sale of goods over £10, 64
 sale of stocks and shares, 101
- Writing, when required for
 sale of copyhold land, 117
 sale of freehold land, 121
- Written contract,
 not varied by parol, 71
- X.
- Xd, meaning of, 106
- Y.
- Years' purchase, meaning of, 123
- Younger children,
 includes daughters older than first son, 149



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